



Public Service Commission
State of North Dakota

APR 30 2019

COMMISSIONERS

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30 April 2019

Vonette Richter
Code Revisor
North Dakota Legislative Council
State Capitol
Bismarck, ND 58505-0360

Via hand delivery only

RE: Energy Conversion Facility Siting Criteria
PSC Case No. PU-19-36

Dear Ms. Richter:

Enclosed for publication in the North Dakota Administrative Code, please find a copy of amendments to North Dakota Administrative Code Section 69-06-08-01, Energy Conversion Facility Siting Criteria. In support of this filing, enclosed please find copies of:

- The Public Service Commission's 30 April 2019 Motion to adopt Rules and file, with final rules attached.
- Letter from the Attorney General dated 29 April 2019 approving the proposed rules as to legality;
- The Public Service Commission's 27 March 2019 Order Submitting Rules to Attorney General, which includes a summary of all comments, written and oral, and is the written record of the agency's consideration of all comments;
- Copies of written comments.

A Fiscal Note was not required. Thank you for your attention to this matter. If you have any questions, please call 328-2421, or e-mail to jschuh@nd.gov.

Best regards,

John Schuh
Legal Counsel

attachments



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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OPINION

April 29, 2019



Mr. John Schuh
Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck, ND 58505

Dear Mr. Schuh:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. § 69-06-08-01 concerning removal of prime and unique farmland, and irrigated land, from being excluded from consideration for an energy conversion facility, and to clarify additional exclusion areas for a wind energy conversion facility, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was not required to be issued because the proposed rule changes are not expected to have an impact of over fifty thousand dollars on the regulated community nor was a request for a regulatory analysis requested by the Governor or any member of the Legislative Assembly, 3) a takings assessment was not required because there is no constitutional taking caused by the proposed rule changes, 4) no small entity regulatory analysis or economic impact statement were prepared because no adverse impact on small entities is anticipated nor are the rule changes expected to have any economic impact on small entities, 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in substantial compliance¹ with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem
Attorney General

amj
cc: Emily L. Thompson, Legislative Council

¹ One newspaper (The New England Herald) failed to publish the required notice within the 20 days before the hearing pursuant to N.D.C.C. § 28-32-10. This appears to be an error of the newspaper and all other notices were published in accordance with the law.

**CHAPTER 69-06-08
CRITERIA**

Section	
69-6-8-1	Energy Conversion Facility Siting Criteria
69-6-8-2	Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - ~~d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, this exclusion does not apply.~~
 - ~~e. Irrigated land.~~
 - f. Areas critical to the life stages of threatened or endangered animal or plant species.
 - g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - h. Areas within one thousand two hundred feet of the geographic

center of an intercontinental ballistic missile (ICBM) launch or launch control facility.

2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:

- a. Areas within:

- (1) One and one-tenth times the height of the turbine from the nearest edge of an interstate or state roadway right of way;
- (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
- (3) One and one-tenth times the height of the turbine from the nearest edge of ~~any~~ a railroad right of way;
- (4) One and one-tenth times the height of the turbine from a the nearest edge of a one hundred fifteen kilovolt or higher transmission line right of way; and
- (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.

3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility 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. Economic considerations alone will not justify approval of these areas. A buffer zone

of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.

- a. Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.
 - f. Areas of recreational significance which are not designated as exclusion areas.
4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.
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:
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.

- (5) The agricultural quality of the cropland.
 - b. The impact upon the availability and adequacy of:
 - (1) Law enforcement.
 - (2) School systems and education programs.
 - (3) Governmental services and facilities.
 - (4) General and mental health care facilities.
 - (5) Recreational programs and facilities.
 - (6) Transportation facilities and networks.
 - (7) Retail service facilities.
 - (8) Utility services.
 - c. The impact upon:
 - (1) Local institutions.
 - (2) Noise-sensitive land uses.
 - (3) Light-sensitive land uses.
 - (4) Rural residences and businesses.
 - (5) Aquifers.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
 - (9) Temporary and permanent housing.
 - (10) Temporary and permanent skilled and unskilled labor.
 - d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.
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:

- a. Recycling of the conversion byproducts and effluents.
- b. Energy conservation through location, process, and design.
- c. Training and utilization of available labor in this state for the general and specialized skills required.
- d. Use of a primary energy source or raw material located within the state.
- e. Not relocating residents.
- f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
- g. Economies of construction and operation.
- h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
- i. Use of citizen coordinating committees.
- j. A commitment of a portion of the energy produced for use in this state.
- k. Labor relations.
- l. The coordination of facilities.
- m. Monitoring of impacts.
- n. A commitment to install lighting mitigation technology for wind energy conversion facilities subject to commercial availability and federal aviation administration approval.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013; July 1, 2017; July 1, 2018.

General Authority: NDCC 28-32-02, 49-22-18

Law Implemented: NDCC 49-22-05.1, 49-22.1-03

69-06-08-02. Transmission facility corridor and route criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
 - d. Areas critical to the life stages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
 - g. Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch or launch control facilities to avoid microwave interference.
2. **Avoidance areas.** The following geographical areas may not be considered in the routing of a transmission facility 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 routes. Economic considerations alone will not justify approval of these areas. A

buffer zone of a reasonable width to protect the integrity of the area will be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - c. Historical resources which are not specifically designated as exclusion or avoidance areas.
 - d. Areas which are geologically unstable.
 - e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - f. Reservoirs and municipal water supplies.
 - g. Water sources for organized rural water districts.
 - h. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - i. Areas of recreational significance which are not designated as exclusion areas.
3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility 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:
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

- (4) Surface drainage patterns and ground water flow patterns.
- b. The impact upon:
 - (1) Sound-sensitive land uses.
 - (2) The visual effect on the adjacent area.
 - (3) Extractive and storage resources.
 - (4) Wetlands, woodlands, and wooded areas.
 - (5) Radio and television reception, and other communication or electronic control facilities.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
- 4. **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:
 - a. Location and design.
 - b. Training and utilization of available labor in this state for the general and specialized skills required.
 - c. Economies of construction and operation.
 - d. Use of citizen coordinating committees.
 - e. A commitment of a portion of the transmitted product for use in this state.
 - f. Labor relations.
 - g. The coordination of facilities.
 - h. Monitoring of impacts.

- i. Utilization of existing and proposed rights of way and corridors.
- j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking**

Case No. PU-19-36

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

March 27, 2019

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Preliminary Statement

On February 6, 2019, the North Dakota Public Service Commission (Commission) issued a formal Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing, proposing to amend section 69-06-08-01 of the North Dakota Administrative Code.

Also on February 6, 2019, Public Service Commission Staff filed statements regarding the required regulatory analysis, small entity analysis, and takings assessments.

On February 12, 2019, the Commission forwarded the notices to the Legislative Council for publication at least 30 days in advance of the hearing.

The Abbreviated Notice was published once in each of the 52 official county newspapers in the state during the weeks of February 13 through February 22, 2019.

On March 13, 2019, the Commission held the public hearing as noticed, beginning at 1:30 p.m., CST, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until March 25, 2019, during which the Commission received and considered data, views, or written or oral comments concerning the proposed rulemaking as part of the rulemaking record.

The proposed amendments are summarized as follows:

Public Utilities – Section 69-06-08-01 – Energy Conversion Facility Siting Criteria.

The Commission is proposing to amend North Dakota Administrative Code section 69-06-08-01 to remove prime and unique farmland, and irrigated land from designation as exclusion areas for the siting of an energy conversion facility, and to clarify additional exclusion areas for a wind energy conversion facility.

Public Hearing and Comments

Written and oral comments by Patrick Fahn of Commission staff were received at the hearing. During the hearing, oral comments were submitted by Bruce Johnson from the 5th Civil Engineer Squadron of the Minot Air Force Base.

Prior to the hearing, written comments were submitted by Geronimo Energy (Geronimo) and Jeffrey Olsen. After the hearing, Geronimo submitted an additional filing containing comments from Marvin Thorson, Kathryn Waxler, Russell Ruliffson, Michael D. Johnson, and Duane Dows. Mark Mahoney of the Department of Defense also provided follow-up comments to the testimony provided by Bruce Johnson during the hearing.

All comments were reviewed and considered. The comments of Mr. Johnson and Mr. Mahoney are considered beyond the scope of the current rulemaking. However, Staff recorded these suggestions to consider for future rulemaking.

North Dakota Administrative Code section 69-06-08-01(1) provides a list of geographical areas that must be excluded in consideration of a site for an energy conversion facility. Prime farmland and unique farmland are currently exclusion areas, however, if the commission finds that the removal for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, this exclusion does not apply. Irrigated land is also currently an exclusion area.

North Dakota Administrative Code section 69-06-08-01(2) provides additional exclusion areas that must be excluded in the consideration of a site for a wind energy conversion facility.

The Director of Public Utilities, Patrick Fahn, testified that the proposed amendments will delete prime farmland, unique farmland, and irrigated land from the list of exclusion areas. The amendments are intended to allow flexibility in the siting process and does not eliminate commission consideration of a project's effects on agricultural production, family farms and ranches, land economically suited for irrigation, and agricultural quality of cropland; which are selection criteria under Section 69-06-08-01(5). Mr. Fahn also testified that the Commission is proposing to amend Subsection 2 of Section 69-06-08-01 to provide more clarity for additional exclusion areas for wind energy conversion facilities. The exclusion areas are clarified as one and one-tenth times the height of the turbine from "the nearest edge of an interstate or state roadway right of way,

from the nearest edge of a railroad right of way and from the nearest edge of a 115 kV or higher transmission right of way.”

Geronimo provided comments in support of the proposed amendments to remove prime farmland, unique farmland, and irrigated land from the list of areas that must be excluded from consideration of a site. Geronimo submitted that renewable projects provide opportunity for landowners to diversify their income and that they are voluntary agreements to develop their land.

In its additional filing, Geronimo reiterated its comments and attached letters of landowners in support of the rule change. All of the attached letters were from Cass County landowners and expressed support for landowner’s rights and the proposed rule changes.

Jeffrey R. Olsen provided comments in opposition to removing prime farmland, unique farmland, and irrigated land from consideration in the siting criteria for energy conversion facilities. Mr. Olsen expressed concern that out-of-state interests will take advantage of cash-strapped farmers to sign away productive land with lease agreements of 50 years or more, encourage the stripping of landscape and cover, and plow and drain natural prairie potholes and nesting areas. Mr. Olsen encouraged adopting stricter rules, some of which were beyond the scope of the rulemaking, but also encouraged preventing the visual impact and impact to relationships and the well-being of neighbors.

In consideration of the Comments received, the Commission recognizes the need for balance when it comes to the siting of infrastructure. With commercial-scale energy development, there can be competing interests between the rights of the developing property owner, interests of the developing company, environmental concerns, and the welfare of nearby neighbors. The proposed rulemaking does not change exclusion and avoidance areas with an environmental impact. It also does not prevent Commission consideration of effects on agricultural production, land suitable for irrigation, agricultural quality of cropland, and effects on family farms and ranches. The proposed rulemaking allows the flexibility to consider a project while retaining the authority to address the concerns through the siting process.

The Commission received no further comments regarding this section and the Commission proposes to adopt this amendment without revisions.

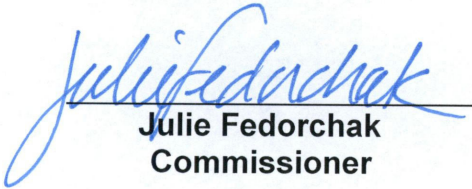
Discussion

Having reviewed the proposed rules, and the testimony and comments received, the Commission finds good cause for submitting the proposed rules, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

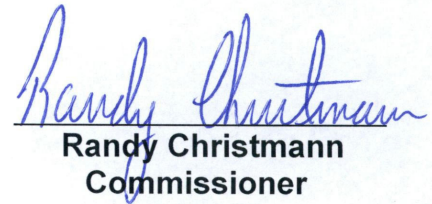
Order

The Commission orders the proposed revision to section 69-06-08-01 to the North Dakota Administrative Code attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to legality.

PUBLIC SERVICE COMMISSION


Julie Fedorchak
Commissioner


Brian Kroshus
Chairman


Randy Christmann
Commissioner

**CHAPTER 69-06-08
CRITERIA**

Section	
69-6-8-1	Energy Conversion Facility Siting Criteria
69-6-8-2	Transmission Facility Corridor and Route Criteria

69-06-08-01. Energy conversion facility siting criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - ~~d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, this exclusion does not apply.~~
 - ~~e. Irrigated land.~~
 - f. Areas critical to the life stages of threatened or endangered animal or plant species.
 - g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - h. Areas within one thousand two hundred feet of the geographic

center of an intercontinental ballistic missile (ICBM) launch or launch control facility.

2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:

a. Areas within:

- (1) One and one-tenth times the height of the turbine from the nearest edge of an interstate or state roadway right of way;
- (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
- (3) One and one-tenth times the height of the turbine from the nearest edge of any a railroad right of way;
- (4) One and one-tenth times the height of the turbine from a the nearest edge of a one hundred fifteen kilovolt or higher transmission line right of way; and
- (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.

3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility 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. Economic considerations alone will not justify approval of these areas. A buffer zone

of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.

- a. Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.
 - f. Areas of recreational significance which are not designated as exclusion areas.
4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.
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:
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.

- (5) The agricultural quality of the cropland.
 - b. The impact upon the availability and adequacy of:
 - (1) Law enforcement.
 - (2) School systems and education programs.
 - (3) Governmental services and facilities.
 - (4) General and mental health care facilities.
 - (5) Recreational programs and facilities.
 - (6) Transportation facilities and networks.
 - (7) Retail service facilities.
 - (8) Utility services.
 - c. The impact upon:
 - (1) Local institutions.
 - (2) Noise-sensitive land uses.
 - (3) Light-sensitive land uses.
 - (4) Rural residences and businesses.
 - (5) Aquifers.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
 - (9) Temporary and permanent housing.
 - (10) Temporary and permanent skilled and unskilled labor.
 - d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.
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:

- a. Recycling of the conversion byproducts and effluents.
- b. Energy conservation through location, process, and design.
- c. Training and utilization of available labor in this state for the general and specialized skills required.
- d. Use of a primary energy source or raw material located within the state.
- e. Not relocating residents.
- f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
- g. Economies of construction and operation.
- h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
- i. Use of citizen coordinating committees.
- j. A commitment of a portion of the energy produced for use in this state.
- k. Labor relations.
- l. The coordination of facilities.
- m. Monitoring of impacts.
- n. A commitment to install lighting mitigation technology for wind energy conversion facilities subject to commercial availability and federal aviation administration approval.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013; July 1, 2017; July 1, 2018.

General Authority: NDCC 28-32-02, 49-22-18

Law Implemented: NDCC 49-22-05.1, 49-22.1-03

69-06-08-02. Transmission facility corridor and route criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
 - d. Areas critical to the life stages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
 - g. Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch or launch control facilities to avoid microwave interference.

2. **Avoidance areas.** The following geographical areas may not be considered in the routing of a transmission facility 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 routes. Economic considerations alone will not justify approval of these areas. A

buffer zone of a reasonable width to protect the integrity of the area will be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.

- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - c. Historical resources which are not specifically designated as exclusion or avoidance areas.
 - d. Areas which are geologically unstable.
 - e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - f. Reservoirs and municipal water supplies.
 - g. Water sources for organized rural water districts.
 - h. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - i. Areas of recreational significance which are not designated as exclusion areas.
3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility 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:
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.

- (4) Surface drainage patterns and ground water flow patterns.
- b. The impact upon:
 - (1) Sound-sensitive land uses.
 - (2) The visual effect on the adjacent area.
 - (3) Extractive and storage resources.
 - (4) Wetlands, woodlands, and wooded areas.
 - (5) Radio and television reception, and other communication or electronic control facilities.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
- 4. **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:
 - a. Location and design.
 - b. Training and utilization of available labor in this state for the general and specialized skills required.
 - c. Economies of construction and operation.
 - d. Use of citizen coordinating committees.
 - e. A commitment of a portion of the transmitted product for use in this state.
 - f. Labor relations.
 - g. The coordination of facilities.
 - h. Monitoring of impacts.

- i. Utilization of existing and proposed rights of way and corridors.
- j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1



March 8, 2019

VIA E-MAIL (ndpsc@nd.gov)

Steve Kahl
Interim Executive Secretary
Public Service Commission
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

**RE: Public Service Commission – Energy Conversion Facility Siting Criteria Rulemaking
Case No. PU-19-36**

Dear Mr. Kahl:

Geronimo Energy, LLC (“Geronimo”) provides the following comments regarding the siting criteria changes proposed by the North Dakota Public Service Commission (“Commission”) in the above-referenced rulemaking docket. As background, Geronimo is a utility-scale renewable energy development company headquartered in Edina, Minnesota. Geronimo has developed multiple wind farms and solar projects throughout the United States, including in North Dakota. Currently, Geronimo is the parent company of Harmony Solar ND, LLC, which is developing the Harmony Solar Project in Cass County, North Dakota, and Prosperity Wind Farm, LLC and Prosperity Wind Farm 2, LLC, which are developing wind farms, also in Cass County, North Dakota.

With deep roots in agriculture, Geronimo prides itself on developing wind farms that are farmer-friendly, community-driven, and beneficial for rural communities. For this reason in particular, Geronimo supports the Commission’s proposal to remove prime farmland, farmland of statewide importance, and irrigated land from the list of exclusion areas in Section 69-06-08-01(1) of the North Dakota Administrative Code. Renewable energy projects, such as wind and solar projects, provide an opportunity for landowners in rural areas to diversify their income. Further, these projects require support from and voluntary agreements with the landowners. As such, the landowners are choosing to participate in such projects because they have determined that is how they want to use their land. Removing prime farmland/farmland of statewide importance and irrigated land as exclusion areas helps facilitate landowner choice when it comes to participation in wind and solar projects.

If you have any questions, please let me know.

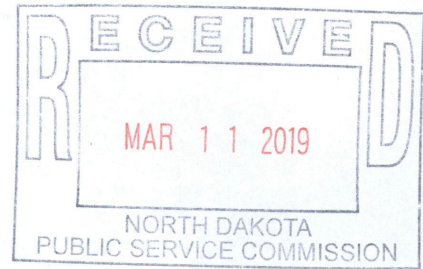
Sincerely,

A handwritten signature in cursive script that reads "Betsy Engelking".

Elizabeth Engelking,
Vice President

7650 EDINBOROUGH WAY, STE 725, EDINA, MN 55435 | P 952.988.9000 | F 952.988.9001
www.geronimoenergy.com

Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking
Case No. PU-19-36



Citizen Comment:

I wish to make my comments known to the Public Service Commission that I strongly oppose removing prime farmland, unique farmland, and irrigated land from consideration in the siting criteria for energy conversion facilities.

The siting criteria current in place is to protect North Dakota's limited forest and fauna from exploitation from outside interests. These out of state interests pray on financially strapped farmers to sign away productive farmland for unrealistic land lease agreements of 50 years and more. They encourage landowners to strip the land of any landscape and cover, drain and plow under natural prairie potholes and nesting areas for the promise of a few dollars.

Maintaining and strengthening siting criteria is crucial to guarantee property values and the health and wellbeing of neighbors and the working relations they have with each other.

My concern is a proposed wind turbine farm planned for northwest Cass County. The farm is to include four townships (Ayr, Rich, Empire, and Erie) or 144 square miles of "prime farmland". Geronimo Energy, a Minnesota based company, is behind this boondoggle. 31 sections of land have already been signed up for a 67 year land lease. Conditional use permits have not been issued by township boards and many of those board members have conflicts of interest as they have signed up their own land for direct benefit. In my township alone (Rich) I have witnessed tree claim after tree claim being removed. Prairie potholes drained, burned and plowed under to increase land area. Natural drainage rerouted to benefit participating landowners while harming others. SODAR units and testing towers dot Rich and Ayr township. The landscape has an unnatural sickly look about it. Waterfowl once abundant in the spring is all but gone short of a duck or two. Daily raptor sightings gone also. Pollinator counts over the last two years are down sharply and detected in lower yields of harvested fruits and vegetables.

Expressing my concerns about the project to Geronimo Energy, I was advised, "the PSC would approve the site because of their great record with them" and told by one of their officials to "enjoy my view of the array from my patio".

Energy Conversion Facility Siting Criteria should also include protecting individuals from their neighbors as the promise of dollars has clouded their minds with greed and self-preservation.

I encourage the PSC to adopt stricter rules that requires any such facilities to be:

at least one mile from a nonparticipating landowner.

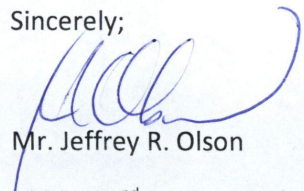
dBA levels at one mile should be required to be under 30 dBA.

Low level noise at one mile should be kept within medical acceptable levels.

Any property devaluation issues caused by such facilities are the sole liability of the participating landowner and the injured property owner has a right to sue for treble damages.

North Dakota is turning into an eyesore; a wasteland by out of state interests under the guise of tax relief and economic prosperity. The PSC has a duty to protect and prevent that.

Sincerely;

A handwritten signature in blue ink, appearing to read 'J. Olson', with a large, sweeping flourish extending to the right.

Mr. Jeffrey R. Olson

13905 22nd Street Southeast

Page, ND 58064

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking**

Case No. PU-19-36

STAFF TESTIMONY
March 13, 2019

My name is Patrick Fahn. I am the Director of Public Utilities with the Public Service Commission. My testimony introduces proposed changes to the Commission's administrative rules pertaining to the Energy Conversion Facility Siting Criteria, Section 69-06-08-01 of the North Dakota Administrative Code, which implements North Dakota Century Code Chapter 49-22 and Chapter 49-22.1.

Section 69-06-08-01 identifies the criteria that guides and governs the Commission's site suitability evaluation process. The criteria includes exclusion areas, avoidance areas, selection criteria and policy criteria. Exclusion areas are geographic areas that *must* be excluded in the consideration of a site for an energy conversion facility.

The Commission is proposing to amend Section 69-06-08-01 to delete prime farmland, unique farmland, and irrigated land from the list of areas that must be excluded from consideration of a site. The change is intended to allow discretion in the siting process regarding prime farmland, unique farmland, and irrigated land; and does not eliminate consideration of a project's effects on agricultural production, family farms and ranches, land economically suitable for irrigation, and the agricultural quality of cropland; which are selection criteria under Section 69-06-08-01.

The Commission is also proposing to amend Subsection 2 of Section 69-06-08-01 to be more clear that “Additional exclusion areas for wind energy conversion facilities” are one and one-tenth times the height of the turbine from “the nearest edge of an” interstate or state roadway right of way, from “the nearest edge of a” railroad right of way, and from “the nearest edge of a” 115 kV or higher transmission line “right of way.”

This concludes my testimony. I would be happy to answer any questions at this time. Thank you.



March 22, 2019

VIA E-MAIL (ndpsc@nd.gov)

Steve Kahl
Interim Executive Secretary
Public Service Commission
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

**RE: Public Service Commission – Energy Conversion Facility Siting Criteria Rulemaking
Case No. PU-19-36**

Dear Mr. Kahl:

Geronimo Energy, LLC (“Geronimo”) provides the following additional comments regarding the siting criteria changes proposed by the North Dakota Public Service Commission (“Commission”) in the above-referenced rulemaking docket. On March 8, 2019, Geronimo submitted comments in support of the Commission’s proposal to remove prime farmland, farmland of statewide importance, and irrigated land from the list of exclusion areas in Section 69-06-08-01(1) of the North Dakota Administrative Code. Since that time, Geronimo has had various discussions with landowners in Cass County, North Dakota, who strongly support landowners’ rights to choose if they host an energy project on their property as similarly represented at the Harmony project site permit hearing. Additionally, several landowners have provided additional letters and comments in support of this rule change. Geronimo is filing the attached documents on their behalf and reiterates its initial comments.

In addition, Geronimo has reviewed the comments submitted by Mr. Jeffery R. Olson and offers a few comments in response. First, to clarify, the wind projects referenced by Mr. Olson are currently in development. Geronimo has not undertaken any tree clearing and all development related activities have been conducted with the appropriate permit and landowner consent. Second, once additional development activities and the necessary environmental analyses have been completed, Geronimo plans to file siting applications with the Commission seeking the appropriate permits for the projects. Third, Geronimo has sent project communications to Mr. Olson and has spoken to him directly; however, he has requested we do not contact him again. Geronimo is willing to coordinate with Mr. Olson and will address project specific topics and concerns through ongoing development activities and project specific permitting processes, including permitting with the Commission at the appropriate time. While Geronimo understands that these comments may not necessarily be relevant to the rulemaking proceeding at hand, we felt it important to provide these clarifications.

Mr. Steve Kahl
Page 2
March 22, 2019

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Engelking". The signature is written in a cursive style and is placed over a light gray rectangular background.

Elizabeth Engelking,
Vice President

Enclosures

Public Service Commission
Energy Conversion Facility Siting Criteria Rulemaking
Case No. PU-19-36

I am a landowner in Cass County, North Dakota. I strongly support landowners rights in North Dakota and support the North Dakota Public Service Commission's proposal to remove prime farmland, farmland of statewide importance, and irrigated land from the list of exclusion areas in Section 69-06-08-01(1) of the North Dakota Administrative Code.

Signature:

Marvin Thorson

Printed Name:

Marvin Thorson

Address:

13751 16th St SE

Page ND 58064

3/22/2019

**Public Service Commission
Energy Conversion Facility Siting Criteria Rulemaking
Case No. PU-19-36**

I am a landowner in Cass County, North Dakota. I strongly support landowners rights in North Dakota and support the North Dakota Public Service Commission's proposal to remove prime farmland, farmland of statewide importance, and irrigated land from the list of exclusion areas in Section 69-06-08-01(1) of the North Dakota Administrative Code.

Signature: Kathryn Waxler
Printed Name: Kathryn Waxler
Address: 9327 Jerqen Ave S
Cottage Grove MN 55016

**Public Service Commission
Energy Conversion Facility Siting Criteria Rulemaking
Case No. PU-19-36**

I am a landowner in Cass County, North Dakota. I strongly support landowners rights in North Dakota and support the North Dakota Public Service Commission's proposal to remove prime farmland, farmland of statewide importance, and irrigated land from the list of exclusion areas in Section 69-06-08-01(1) of the North Dakota Administrative Code.

Signature: Russell Ruliffson

Printed Name: Russell Ruliffson

Address: 2953 163rd Ave SE
Harwood ND 58042

Public Service Commission
Energy Conversion Facility Siting Criteria Rulemaking
Case No. PU-19-36

I am a landowner in Cass County, North Dakota. I strongly support landowners rights in North Dakota and support the North Dakota Public Service Commission's proposal to remove prime farmland and of statewide importance, and irrigated land from the list of exclusion areas in Section 69-06-08 01(1) of the North Dakota Administrative Code.

Signature: Richard D. Johnson
Printed Name: MICHAEL D. JOHNSON
Address: 432 WILKIN AVE.
BROCKENRIDGE, MN 56520

Public Service Commission
Energy Conversion Facility Siting Criteria Rulemaking
Case No. PU-19-36

I am a landowner in Cass County, North Dakota. I strongly support landowners rights in North Dakota and support the North Dakota Public Service Commission's proposal to remove prime farmland, farmland of statewide importance, and irrigated land from the list of exclusion areas in Section 69-06-08-01(1) of the North Dakota Administrative Code.

Signature: Duane Dows

Printed Name: Duane Dows

Address: 14090 16th St. SE.

Page, N.D. 58064

3-22-19



DEPARTMENT OF DEFENSE
REGIONAL ENVIRONMENTAL COORDINATOR, REGION VIII
REGIONAL ENVIRONMENTAL AND ENERGY OFFICE- WESTERN
US CUSTOM HOUSE
721 19TH STREET, ROOM 427
DENVER, CO 80202

March 22, 2019

Steve Kahl
Interim Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck, North Dakota 58505-0480
ndpsc@nd.gov

Subject: Comment Letter PU-19-36 Section 69-06-08-01 – Energy Conversion Facility Siting Criteria

As the Department of Defense (DOD) Regional Environmental Coordinator (REC) in U.S. Environmental Protection Agency (EPA) Region 8, I am responsible for coordinating Armed Services responses to environmental policies and regulatory matters and ensuring our State partners are informed of any impacts to military operations that that might result from proposed legislation or regulation. I sincerely appreciate the opportunity to share our feedback on the North Dakota Public Service Commission's Notice of Intent to Amend Administrative Rules under Section 69-06-08-01 (Case No. PU-19-36). Specifically, I am writing to ensure safety concerns at Minot Air Force Base (AFB) are taken into consideration as you consider revisions to your facility siting criteria.

The State of North Dakota and the Public Service Commission have always made an effort to take the mission at Minot AFB seriously and accommodate the unique land use and air space concerns that come with maintaining and securing our missile facilities. The State demonstrated its commitment to our concerns when it memorialized the 1,200 foot setback requirement for our launch control facilities and the 30ft electronic interference setback in its siting criteria in order to protect Minot AFB launch facilities from incompatible development. Because you are considering amending the criteria at this time we thought it was a good opportunity to inform you of the growing safety concerns associated with the close proximity of wind turbines to our launch facilities and request that while amending the criteria, you add the requirement to: (1) consult with affected military installations; and (2) clarify the 1,200 foot setback from launch facilities be measured from the end of the turbine blade rather than the tower.

The need to consult directly with our affected installations is critical given the sensitive nature of the mission, the emerging technologies and equipment used at our military installations and the hazards posed by the growth of the turbine industry in a terrain that is

regularly used by our helicopters to provide overhead security in sensitive locations in often dangerous weather conditions. Representatives from Minot AFB attended the March 13 2019 hearing outlining concerns related to the proposed rule. We appreciated your incorporation into the final rule the comments in this letter and those expressed by representatives of Minot AFB during the March 13, 2019 hearing.

DOD remains committed to partnering with the North Dakota Public Service Commission to ensure the safety of our missile fields and integrity of our mission. We appreciate the opportunity to provide our concerns in writing and participate in your public hearing. If you have questions or need additional information, please contact Kevin Ward at kevin.m.ward@usace.army.mil or at 303.844.0955.

Sincerely,



Mark Mahoney
Department of Defense
Regional Environmental Coordinator,
Region 8