

Brief and Proposed Findings Fact, Law, and Order for Northern Divide Wind and Associated Transmission Facilities (ND PSC Dockets No. PU-19-376,19-377/OAH File Nos. 20200007,20200008)

May 11, 2020

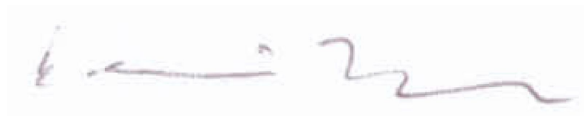
Mr. Steve Kahl, Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
ndpsc@nd.gov

Dear Mr. Kahl:

Please find attached a copy of LIUNA Minnesota & North Dakota's Brief and Proposed Findings Fact, Law, and Order for Northern Divide Wind and Associated Transmission Facilities

If you have any questions, please feel free to contact me at 612.224.6464 or kpranis@liunagroc.com.

Sincerely,



Kevin Pranis
Marketing Manager

NORTH DAKOTA PUBLIC SERVICE COMMISSION

<p>In the Matter of the Application for a Siting Permit for the Northern Divide Wind Project - Burke County</p> <p>ND PSC Docket Nos. PU-19-376 and 19-377</p> <p>OAH File Nos. 20200007, 20200008</p>	<p>LIUNA Minnesota & North Dakota Brief and Proposed Findings of Fact, Conclusions of Law and Order</p>
--	---

The Laborers District Council of Minnesota & North Dakota (“LIUNA Minnesota & North Dakota”) offers the following Brief and Proposed Findings of Fact, Conclusions of Law and Order in the matter of the a Siting Permit and Routing Permit for the proposed Northern Divide wind farm and associated transmission line (“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.”

Northern Divide Wind, LLC (“the Applicant”), an affiliate of NextEra Energy Resources, LLC (“NextEra”) has met their burden to show that the Project is compatible with environmental preservation, and has been designed to minimize adverse environmental impacts. The record shows that NextEra’s current proposal has sufficiently addressed issues that caused the Commission to reject an earlier plan for the facility, and that the environmental benefits now outweigh the environmental harms. The remaining question is whether the Project, as proposed, is compatible with efficient use of resources, minimizes other adverse impacts, and will help to ensure system reliability, integrity, and the orderly fulfillment of energy needs.

We are concerned by the number of purely speculative wind energy siting proposals that have been filed with the Commission in recent years, but Northern Divide is not one of them. The record shows that the project will provide power to Basin Electric Power Cooperative (“Basin Electric”) which in turn serves “the region’s homes and businesses” through rural electric cooperatives. Conversely, North Dakotans who are customers of co-ops or other entities served by Basin Electric will end up helping to pay for the project through their electric bills.

Construction jobs are not the only potential economic benefit of the Project, but they are among the most significant. Evidence in the record shows that a project built by a majority-local workforce could generate \$12 million to \$15 million in economic activity over the near term -- equivalent to nearly half of the production tax that the project is expected to generate over 30 years.

Yet the record shows that the economic impacts of construction could vary substantially based on the Project's use of construction labor. Further, evidence in the record indicates that North Dakota's energy development opportunities are a finite resource due to transmission constraints and limited demand for power among other factors. As a result, in the absence of a transparent reporting mechanism, it will be difficult for the Commission to know whether approval of the project has hurt or harmed North Dakota workers and the state's economy.

Beyond the potential for the project to "crowd out" more beneficial alternatives, which was described in the testimony of Dr. Franco and the letter from the ULLICO Infrastructure Management Fund, there is also a risk of economic displacement and damage to North Dakota's coal-fired power sector, which employs many North Dakotans, including LIUNA members. The testimony of Mr. Cortina in the record describes the impact on LIUNA members of coal-plant closures, but we would also encourage the Commission to take notice of last week's announcement by Great River Energy of plans to retire Coal Creek Station, which is likely to result in the elimination of hundreds if not thousands of family-supporting jobs.

If North Dakota's resources were limitless, it could be argued that any economic benefit, even a single construction 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.

Under such circumstances, a wind energy project that fails to maximize employment of local workers risk producing a net *loss* of jobs and economic development to Burke and Mountrail 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.

If the Project is ever built, it will certainly take up limited transmission capacity that will no longer be available for competing development proposals. 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.

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 an 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.

With respect to employment of local labor, which is among the most significant components of economic development, Applicant failed to demonstrate that local labor will be “utilized for the project as applicable and feasible” during the hearing. Applicant’s witness Mr. Harrington 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 could expect to achieve.

LIUNA Minnesota & North Dakota has provided evidence demonstrating the feasibility of building a project such as Northern Divide Wind using a majority-local construction workforce, including unrefuted testimony from Mr. Cortina concerning the successful execution of past majority-local projects. The only counter-argument offered by Applicant concerned competition for skilled labor from the oil and gas industry. In addition to explaining how past projects had been built with majority local labor notwithstanding competition from the oil and gas industry, however, Mr. Cortina noted in his testimony that “we’re seeing big layoffs in oil and gas so we will be looking at a surplus of workers.” The Commission could further take administrative notice of the continued deterioration of North Dakota’s employment picture since the hearing, which all but ensures the availability of qualified local workforce.

Unfortunately, the 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. Harrington indicated that utilization of local workforce would be left up to Applicant's general contractor, even as he declined to refute Mr. Cortina's estimate that locals accounted for roughly seven percent of workforce on a recent NextEra project built by the same EPC contractor.

Had the 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.

The potential costs are very real and are quantified in the record, including the potential loss of 80 or more jobs, and \$5.4 million or more in local short economic activity (\$7.2 million over the long term) if Northern Divide resembles recent projects observed by LIUNA Minnesota & North Dakota rather than local hire success stories such as the Sunflower and Tatanka wind farms.

The Applicant could have addressed 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 declined to do so. The Commission could shed light on this potential challenge and mitigate the risk of economic losses by implementing a quarterly reporting requirement similar to a requirement adopted by Minnesota's Public Utility Commission.

The State of North Dakota cannot afford to allow energy development opportunities and scarce resources to be consumed by projects that provide limited benefits to local residents and constrain 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 losing 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 result in a net loss of North Dakota jobs unless the Commission takes action to mitigate the risk by requiring reporting.

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 were inclined to approve the application for the Project, approval be conditioned on a 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 filed in the record a memorandum from the Braaten Law Firm that lays out the legal foundation for such a requirement. 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.

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

- A typical North Dakota worker employed on a wind energy construction project can be expected to earn roughly \$55,000 in wages and \$27,000 in fringe benefits, which in turn contribute an estimated \$94,000 to the local economy over the short term and \$117,000 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 \$5.4 million and \$7.2 million in incremental local economic activity compared to use of a 10% to 30% local workforce.
- Past wind and other large energy projects, including the Tatanka and Sunflower wind farms and the Dakota Access Pipeline, have been built using a majority North Dakota workforce.
- In addition to existing workforce and workers laid off due to a recent downturn in oil and gas work, 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.

LIUNA Minnesota & North Dakota proposes the following Finding of Fact:

- No significant adverse impacts are foreseen to community services. The Project could be of economic benefit to the affected area through the creation of construction, operation and maintenance jobs, easements payments to landowners, state and local tax revenue, and local expenditures. The economic impact of the Project will depend to a significant degree, however, on the utilization of local construction workforce and impacts of transmission constraints on local utilities and future energy projects.

LIUNA Minnesota & North Dakota further proposes the following order point:

- The Permittee shall file quarterly reports with the Commission within 45 days of the end of the quarter regarding construction workers that participated in construction of the Project. The Reports shall (a) detail the Permittee's efforts and the site contractor's efforts to hire North Dakota workers, and (b) provide an account of 1) the gross number of hours worked by workers who are were qualified as North Dakota residents under North Dakota Century Code § 16.1-01-04(1)(c) for at least 30 days prior to the commencement of construction; 2) the gross number of hours worked by workers who are residents of other states, but maintain a permanent residence within 150 miles of the project; and 3) the total gross hours worked. The Report may not include personally identifiable data.