



Public Service Commission
State of North Dakota

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6 October 2021

Jill Grossman
Code Revisor
North Dakota Legislative Council
State Capitol
Bismarck, ND 58505-0360

Via hand delivery only

Re: Proposed Amendments to Administrative Rules
PSC Case Numbers PU-20-398 and PU-20-422

Dear Ms. Richter:

Enclosed please find proposed new additions and amendments to the North Dakota Administrative Code by the North Dakota Public Service Commission. The topics of the rules are proposing new Chapter 69-09-11, regarding Common Pipeline Carriers, and proposed amendments to Article 69-06, Energy Conversion Facility Siting Criteria. In support of this filing, enclosed please find copies of:

1. The promulgated proposed final revised Rules;
2. Staff testimony and all other comments;
3. The Commission's 9 June 2021 *Order Submitting Rules to Attorney General*, which includes a summary of all comments;
4. The 22 July 2021 letter from the Attorney General approving the proposed Rules as to legality;
5. Statements on Regulatory Analysis Small Entity Analysis and Takings Assessment for each case;
6. Fiscal Note; and
7. The 6 October 2021 Commission Motion to adopt proposed Rules and forward to Legislative Council.

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
General Counsel

attachments

Legislative Council Received
(date) 10/6/21.

- 28 PU-20-422 Filed 10/06/2021 Pages: 134
Letter to Legislative Council enclosing proposed rules and attachments
Public Service Commission
- 20 PU-20-398 Filed 10/06/2021 Pages: 134
Letter to Legislative Council enclosing proposed rules and attachments
Public Service Commission

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Common Pipeline Carriers
Rulemaking

Case No. PU-20-398

CHAPTER 69-09-11
Common Pipeline Carriers

69-09-11-01 Pipeline Carrier Tariffs.

A common pipeline carrier shall maintain its tariffs and have them available for production upon commission request.

History: Effective _____, 2020.

General Authority: NDCC 28-32-02, NDCC 49-19-17

Law Implemented: NDCC 49-19-17

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking

Case No. PU-20-422

ARTICLE 69-06
ENERGY CONVERSION AND TRANSMISSION FACILITY SITING

Chapter	
69-06-01	General Provisions
69-06-02	Utility Reporting Requirements
69-06-02.1	Request for Jurisdictional Determination
69-06-03	Letter of Intent [Repealed]
69-06-04	Certificate of Site Compatibility
69-06-05	Transmission Facility Permit
69-06-06	Waiver of Procedures and Time Schedules
69-06-07	Emergency Certificate or Permit [Repealed]
69-06-08	Criteria
69-06-09	Continuing Suitability of Certificate or Permit
69-06-10	Small Wind Energy Conversion Facilities
69-06-11	Wind Energy Conversion Facility Lighting Systems

CHAPTER 69-06-01
GENERAL PROVISIONS

Section	
69-06-01-01	Definitions
69-06-01-02	Procedure for Public Hearings
69-06-01-03	Advisory Committees
69-06-01-04	Application
69-06-01-05	Designated Agencies and Officers
69-06-01-06	Siting Fee Refund

69-06-01-01. Definitions.

The terms used throughout this article have the same meanings as in North Dakota Century Code chapter 49-22, and in addition:

1. "Act" means the North Dakota Energy Conversion and Transmission Facility Siting Act, North Dakota Century Code chapter 49-22.
2. "Avoidance criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes unless it is shown that under the circumstances there are no reasonable

alternatives.

3. "Criteria" means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.
4. "Designated corridor" means a corridor for which a certificate has been issued by the commission.
5. "Designated route" means a route for which a permit has been issued by the commission.
6. "Designated site" means a site for which a certificate has been issued by the commission.
7. "Extractive resources" means natural resources that are removed during the construction of a facility, including sand, gravel, soil, rock, and other similar materials.
8. "Exclusion criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes.
9. "Height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.
10. "Historical resource" means a district, site, building, structure, or other object which possesses significance in history, archaeology, paleontology, or architecture, or has other cultural value to the state or local community.
11. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.
12. "Policy criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility.
13. "Refinement" means the action or process of purifying.
14. "Selection criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.

15. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22 and 49-22.1.
16. "Wetland" means an aquatic area important to the life stages of certain wildlife species as defined by the United States fish and wildlife service.

History: Amended effective August 1, 1979; April 1, 2013; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-01, 49-22-03, 49-22-05.1, 49-22-07, 49-22-08, 49-22-08.1, 49-22-19

69-06-01-05. Designated agencies and officers.

The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. ~~State department~~ Department of health.
5. Department of human services.
6. ~~Labor department~~ Department of Labor and human rights.
7. Department of career and technical education.
8. Department of commerce.
9. Energy development infrastructure and impact office.
10. Game and fish department.
11. Industrial commission.
12. ~~Governor~~ Office of the Governor.
13. Department of transportation.
14. State historical society of North Dakota.

15. Indian affairs commission.
16. Job service North Dakota.
17. Department of trust lands.
18. Parks and recreation department.
19. ~~Soil~~ Natural resources conservation committee service.
20. State water commission.
21. United States department of defense.
22. United States fish and wildlife service.
23. United States army corps of engineers.
24. Federal aviation administration.
25. The county commission of the county of counties where the project is located.
26. North Dakota transmission authority.
27. North Dakota pipeline authority.
28. North Dakota department of environmental quality.
29. North Dakota geological survey.
30. North Dakota forest service.
31. Federal bureau of land management.
32. Military Aviation and Installation Assurance Siting Clearinghouse.
33. 20th Airforce 91st Missile Wing.
34. Minot Air Force Base
35. Grand Forks Air Force Base

History: Effective August 1, 1979; amended effective July 1, 2008; April 1, 2013; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-06. Siting fee refund.

After all siting permits and certificates are issued by the commission and after all siting process and project inspection expenses are paid, ~~notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except five thousand dollars or the amount of the fee remaining if that amount is less than five thousand dollars. When construction and all postconstruction inspections are complete and when the commission has determined that any required tree mitigation is satisfactory, any remaining balance of the application fee will be refunded to the applicant. No refunds for less than fifty dollars will be processed.~~

History: Effective July 1, 2008; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-22

69-06-02-02. Filing.

1. ~~Ten copies of each~~ A ten year plan must be filed with the commission, and one copy of each plan must be filed with the county auditor of each county in which any part of a site or corridor is proposed to be located.
2. Notice of the filing of each plan must be given by the utility to each agency and officer entitled to notice as designated in section 69-06-01-05.

History: Amended effective August 1, 1979; April 1, 2013; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-04

**CHAPTER 69-06-04
CERTIFICATE OF SITE COMPATIBILITY**

Section

69-06-04-01

Application

69-06-04-02

Designation of Sites

69-06-04-01. Application.

1. **Form.** An application must be reproduced and bound to eight and one-half-inch by eleven-inch size. Accompanying maps must be folded to eight and one-half inches by eleven inches with the title block appearing in the lower right-hand corner.
2. **Contents.** The application must contain:
 - a. A description of:

- (1) The type of energy conversion facility proposed;
 - (2) The gross design capacity;
 - (3) The net design capacity;
 - (4) The estimated thermal efficiency of the energy conversion process and the assumptions upon which the estimate is based;
 - (5) The number of acres that the proposed facility will occupy; and
 - (6) The anticipated time schedule for:
 - (a) Obtaining the certificate of site compatibility;
 - (b) Completing land acquisition;
 - (c) Starting construction;
 - (d) Completing construction;
 - (e) Testing operations;
 - (f) Commencing commercial production; and
 - (g) Beginning any expansions or additions.
- b. Copies of any evaluative studies or assessments of the environmental impact of the proposed facility submitted to any federal, regional, state, or local agency.
- c. An analysis of the need for the proposed facility based on present and projected demand for the product or products to be produced by the proposed facility, including the most recent system studies supporting the analysis of the need.
- d. A description of any feasible alternative methods of serving the need.
- e. A study area that includes the proposed facility site, of sufficient size to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.
- f. A discussion of the utility's policies and commitments to limit the environmental impact of its facilities, including copies of board

resolutions and management directives.

- g. A map identifying the criteria that provides the basis for the specific location of the proposed facility within the study area.
- h. A discussion of the criteria evaluated within the study area, including exclusion areas, avoidance areas, selection criteria, policy criteria, design and construction limitations, and economic considerations.
- i. A discussion of the mitigative measures that the applicant will take to minimize adverse impacts which result from the location, construction, and operation of the proposed facility.
- j. The qualifications of each person involved in the facility site location study.
- k. A map of the study area showing the location of the proposed facility and the criteria evaluated.
- l. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the site area.
- m. A discussion of present and future natural resource development in the area.
- n. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission. The information must provide the location of the proposed facilities, the proposed site, and the criteria evaluated.

Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GID/Cad files, the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of the imagery, color bands, i.e., black and white, color, color

infrared, and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83), UTM zone 13N or 14N meters (NAD 83), or geographic coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon commission approval.

3. **Filing.** The applicant shall file an original and ~~ten~~ four copies of an application with the commission. The applicant shall provide additional paper copies upon commission request.
4. **Notice of filing.** The commission shall serve a notice of filing of a complete application on the following:
 - a. The chairman of the board of county commissioners and the auditor of each county in which any part of the site is proposed to be located.
 - b. The chief executive officer of each city in a county in which any part of an energy conversion facility is proposed to be located.
 - c. The chief executive officer of each city within a proposed site for a transmission facility.
 - d. The agencies and officers entitled to notice as designated in section 69-06-01-05.
 - e. The state senators and representatives of each legislative district in which any part of the site is proposed to be located.
5. **Amendment of application.** The commission may allow an applicant to amend its application, consistent with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code article 69-02, at any time during the pendency of an application. A rehearing may be required if the commission determines that a

proposed amendment, which is received after the hearing process has been completed, materially changes the authority sought.

6. **Reapplication.** When a certificate is denied and the commission specifies a modification that would make it acceptable, the applicant may reapply. In a reapplication:
 - a. The reapplication must be heard as specified in section 69-06-01-02.
 - b. The utility shall indicate its acceptance or rejection of the suggested modification.
 - c. If a suggested modification is rejected by the applicant, it shall propose an alternative modification.
 - d. Include a filing fee and any additional fees as specified in North Dakota Century Code chapter 49-22.
 - e. Reapplication must be made within six months of the order denying an application.

History: Amended effective August 1, 1979; April 1, 2013; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

CHAPTER 69-06-05 TRANSMISSION FACILITY PERMIT

Section

69-06-05-01	Application
69-06-05-02	Designation of Corridor and Route

69-06-05-01. Application.

1. **Form.** An application must be reproduced and bound to eight and one-half-inch by eleven-inch size. Accompanying maps must be folded to eight and one-half inches by eleven inches with the title block appearing in the lower right-hand corner.
2. **Contents.** The application must contain:
 - a. A description of the following:
 - (1) The type of facility proposed.

- (2) The purpose of the facility.
 - (3) The technology to be deployed.
 - (4) The type of product to be transmitted.
 - (5) The source of the product to be transmitted.
 - (6) The final destination of the product to be transmitted.
 - (7) The proposed size and design and any alternate size or design that was considered, including:
 - (a) The width of right of way;
 - (b) The approximate length of facility;
 - (c) The estimated span length for electric facilities;
 - (d) The anticipated type of structure for electric facilities;
 - (e) The voltage for electric facilities;
 - (f) The requirement for and general location of any new associated facilities;
 - (g) The estimated distance between surface structures for pipeline facilities;
 - (h) The pipe size for pipeline facilities;
 - (i) The maximum design operating pressure and temperature for pipeline facilities;
 - (j) The maximum design flow rate for pipeline facilities; and
 - (k) The number and general location of compressor or pumping stations.
- b. The anticipated time schedule for accomplishing major events, including:
- (1) Obtaining the certification of corridor compatibility;
 - (2) Obtaining the route permit;

- (3) Completing right-of-way acquisition;
 - (4) Starting construction;
 - (5) Completing construction;
 - (6) Testing operations; and
 - (7) Commencing operations.
- c. A copy of each evaluative study or assessment of the environmental impact of the proposed facility submitted to the agencies listed in section 69-06-01-05 and each response received.
 - d. An analysis of the need for the proposed facility based on present and projected demand for the product transmitted, including the most recent system studies supporting the analysis of the need.
 - e. A description of any feasible alternative methods for serving the need
 - f. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless another appropriate width is determined by the commission.
 - g. A study area that includes a proposed corridor of sufficient width to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.
 - h. A discussion of the factors in North Dakota Century Code section 49-22-09 to aid the commission's evaluation of the proposed route.
 - i. A discussion of the applicant's policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.
 - j. Identification and map of the criteria that led to the proposed route location within the designated corridor, including exclusion areas, avoidance areas, selection criteria, policy criteria, design construction limitations, and economic considerations.
 - k. A discussion of the relative value of each criteria and how the applicant selected the proposed corridor location, giving consideration to all criteria and how the location, construction, and operation of the facility will affect each criteria.

- l. A discussion of the general mitigative measures that the applicant will take to minimize adverse impacts that result from a route location in the proposed corridor and the construction and operation of the facility.
- m. The qualifications of each person involved in the corridor location study.
- n. A map identifying the criteria that led to the proposed route location within the designated corridor and the location of any new associated facilities. Several different criteria may be shown on each map depending on the map scale and the density and nature of the criteria.
- o. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the site area.
- p. A discussion of present and future natural resource development in the area.
- q. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission. The information must provide the location of the proposed facilities, the proposed corridor and route, and the criteria evaluated. Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GIS/Cad files the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of imagery, color bands, i.e., black and white, color, color infrared, and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83). UTM zone 13N or 14N meters (NAD 83), or geographic

coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon commission approval.

3. **Filing.** The applicant shall file an original and ~~ten~~ four copies of an application with the commission. The applicant shall provide additional paper copies upon commission request.
4. **Service.** The applicant shall serve one copy of a complete application on the county auditor in each county in which any part of the designated corridor is located.
5. **Notice of filing.** The commission shall serve a notice of the filing of a complete application on the following:
 - a. The chief executive officer of each city within the designated corridor.
 - b. The agencies and officers entitled to notice as designated in section 69-06-01-05.
 - c. The chairman of the board of county commissioners of each county in which any part of the designated corridor is located.
 - d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.

History: Amended effective August 1, 1979; April 1, 2013; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

69-06-05-02. Designation of corridor and route.

1. **Issuance of a permit.** An order approving the issuance of a permit must:
 - a. Describe the authority granted.
 - b. Contain any special conditions that the commission may require.

- c. Specify any required modifications in the type, design, routing, right-of-way preparation, or construction of the facility.
 - d. Contain findings that the application, with modifications, if any, meets the corridor evaluation process requirements of the Act, and any special conditions the commission may require.
2. **Issuance of a certificate.** When a corridor is approved, the commission shall issue a certificate in accordance with the order.
 3. **Deviations.** The commission may permit a deviation from the designated route before or during construction if the deviation does not violate any of the exclusion and avoidance area criteria of this article. After construction is complete a deviation is governed by North Dakota Century Code section 49-22-03.
 4. **Variance from permit conditions.** The commission may allow a variance from any special condition upon a request demonstrating the existence of good cause.
 5. **Corridor width.** ~~The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless otherwise determined by the commission.~~

History: Amended effective August 1, 1979; April 1, 2013; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

CHAPTER 69-06-08 CRITERIA

Section

69-06-08-01 Energy Conversion Facility Siting Criteria

69-06-08-02 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. 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 [9.14 meters] on either side of a direct line between an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.

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 railroad right of way;

- (4) One and one-tenth times the height of the turbine from 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 forty-five 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.
- e. The impact upon military installations, assets, and operations.

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; July 1, 2019; July 1, 2020; _____.

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 an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.

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. This avoidance area may be waived by the owner.
 - 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; July 1, 2020; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Common Pipeline Carriers
Rulemaking**

Case No. PU-20-398

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

November 24, 2020

My name is Patrick Fahn. I am the Director of the Public Utilities Division of the Public Service Commission.

The purpose of this testimony is to describe the proposed administrative rule changes to North Dakota Administrative Code article 69-09 pertaining to common pipeline carriers. The proposed rule change implements North Dakota Century Code section 49-19-17.

This proposed rule change adopts a new chapter 69-09-11 with new section 69-09-11-01. By law, common pipeline carriers continue to be required to make and publish tariffs under such rules and regulations as may be prescribed by the Commission, but the proposed rule is intended to make clear that common carriers will not be required to file those tariffs except upon request by the Commission.

This concludes my testimony.

Thank you.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

Case No. PU-20-422

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

November 24, 2020

My name is Patrick Fahn. I am the Director of the Public Utilities Division of the Public Service Commission.

The purpose of this testimony is to describe several proposed administrative rule changes to North Dakota Administrative Code article 69-06 pertaining to energy conversion facility and transmission facility siting. The proposed rule changes implement North Dakota Century Code chapters 49-22 and 49-22.1.

The proposed change to 69-06-01-01. Definitions, is a housekeeping change necessitated by the 2017 Legislated split of the siting act under North Dakota Century Code chapter 49-22 into two chapters, namely 49-22 and 49-22.1. The proposed change to the definition of "Siting Rules," definition number 15, is to reference both siting act chapters 49-22 and 49-22.1.

This proposed change to 69-06-01-05. Designated agencies and officers, updates names and adds names of designated agencies entitled to notice from the Commission of an energy conversion facility or transmission facility siting application.

The proposed change to 69-06-01-06. Siting fee refund, simplify and clarify the timing for refund of unused siting application fee funds provided by an applicant for processing the siting application. The proposed change also eliminates the minimum amount for which a refund will be issued.

The proposed change to 69-06-02-02. Filing, eliminates the requirement that ten copies of a utility's ten-year plan must be filed with the commission

The proposed change to 69-06-04-01(2)(n). Application. Contents. Map and GIS requirements, clarifies that the maps and GIS filed in an energy conversion facility siting application must include the location of the proposed facilities, the proposed site, and the criteria evaluated.

The proposed change to 69-06-04-01(3). Application. Filing eliminates the requirement for filing paper copies of a siting application except upon Commission request.

The proposed change to 69-06-05-01(2)(q). Application. Contents. Map and GIS requirements, clarifies that the maps and GIS filed in a transmission facility siting application must include the location of the proposed facilities, the proposed corridor and route, and the criteria evaluated.

The proposed change to 69-06-05-01(3). Application. Filing, eliminates the requirement for filing paper copies of a siting application except upon Commission request.

The proposed change to 69-06-05-02 (5). Designation of Corridor and Route. Corridor Width, eliminates the requirement that a designated corridor

for a transmission facility must be at least ten percent of the facility length, but not less than one mile or greater than six miles unless otherwise determined by the commission. Current commission practice is to designate corridor widths much less than one-mile making this rule ineffectual.

The proposed change to 69-06-08-01(3)(g). Energy conversion facility siting criteria. Avoidance Areas, adds to the list of avoidance areas for an energy conversion facility, areas within 2 nautical miles of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.

The proposed change to 69-06-08-02(2)(e). Transmission facility corridor and route criteria. Avoidance Areas, clarifies that the avoidance area of five hundred feet from a residence, school, or place of business may be waived by either the property owner or the controlling entity. A waiver by the controlling entity is most likely to occur for business or school locations.

This concludes my testimony.

Thank you.

Email: ndpsc@nd.gov

Mailing Address:

North Dakota Public Service Commission

600 E. Boulevard Ave., Dept. 408

Bismarck, ND 58505

November 30, 2020

Re: Public Service Commission

Energy Conversion Facility Siting Criteria

Rulemaking

Case No. PU-20-422

Dear Commissioners:

We are participating landowners in the Ruso Wind Project in Ward County, North Dakota. We understand the Commission has proposed a change to its siting rules that could negatively affect the project and are providing these comments regarding the proposed rule change.

The project has been under development since 2016, and we understand it has conducted extensive site analysis and has nearly completed the Commission's permitting process. We also understand the project coordinated with the Minot Air Force Base and the Department of Defense to avoid impacts to the military's operations. At this point, the project is nearing the finish line – something we have been looking forward to for a while.

If the proposed change making the area within two nautical miles of an intercontinental ballistic missile (ICBM) launch or launch control an "avoidance area" is adopted and applied to the project, we understand that further analysis and project adjustments would be needed to comply. Given all the work that has been done to date to complete the Commission's permitting process, it seems the rules shouldn't change so late in the process. Also, given the sign-off that has already received from the Minot Air Force Base and the Department of Defense on the project, it also doesn't seem necessary to apply such setbacks to the project.

We also ask the Commission to consider the impact the proposed rule change would have on North Dakota landowners' rights to use and develop their land. The proposed rule change would potentially preclude landowners within a 16.5 square mile area around a single ICBM launch or launch control facility from using their land for wind development. We also understand that there are a significant number of ICBM facilities in North Dakota, so a significant number of acres and landowners

would be affected by this rule. The developers of the Ruso Wind Project informed us about the proposed rule change because of the potential effect on the project, but a lot of affected landowners likely aren't aware of the proposed rule change or its potential impact.

As participating landowners, we see the benefits of the Ruso Wind Project for ourselves, our county, and our state. The project will provide a steady income source, a new tax source, and job opportunities within our community. We also believe that the developers of the project have responsibly sited the project to meet the Commission's rules and has done so in coordination with the Minot Air Force Base and the Department of Defense. For these reasons, we encourage the Commission to consider the impact of the proposed rule change on the Ruso Wind Project.

Sincerely,

A handwritten signature in cursive script, appearing to read "Albert Lundvall". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

December 2, 2020

VIA E-MAIL (ndpsc@nd.gov)

North Dakota Public Service Commission
c/o Mr. Steven Kahl, Executive Secretary
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

**RE: Public Service Commission
Energy Conversion Facility Siting Criteria Rulemaking
Case No. PU-20-422**

Dear Mr. Kahl:

Attached for filing in the above-referenced rulemaking docket is National Grid Renewables Development, LLC's comments. If you have any questions, please let me know.

Sincerely,



Mollie M. Smith

Direct Dial: 612.492.7270

Email: msmith@fredlaw.com

MMS:rg:71610251

Encl.

cc: Melissa Schmit (w/ encl.)

14 PU-20-422 Filed 12/02/2020 Pages: 3
Comments from National Grid Renewables Development, LLC regarding proposed Rules
Fredrikson & Byron P.A.
Mollie Smith



December 2, 2020

VIA E-MAIL (ndpsc@nd.gov)

North Dakota Public Service Commission
c/o Mr. Steven Kahl, Executive Secretary
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

**RE: Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking
Case No. PU-20-422**

Dear Commissioners:

National Grid Renewables Development, LLC (which acquired Geronimo Energy, LLC) (“NG Renewables”), provides the following comments regarding the change proposed by the North Dakota Public Service Commission (“Commission”) to N.D.A.C. § 69-06-08-01(3) in the above-referenced rulemaking docket.

As background, NG Renewables is a farmer-friendly and community focused company that develops projects that provide positive economic impact for landowners and community members. NG Renewable’s portfolio includes solar, wind, and energy storage projects throughout the United States in various stages of development, construction, and operation. In North Dakota, NG Renewables developed the Courtenay Wind Project (now owned by Xcel Energy), and is currently developing the Harmony Solar Project and the Prosperity Wind Project.

The Commission is proposing to add a new Avoidance Area for energy conversion facilities to N.D.A.C. § 69-06-08-01(3): “g. Areas within 2 nautical miles of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.” NG Renewables has two concerns regarding this proposed rule change.

First, in NG Renewable’s experience, GIS data, official maps, or other documentation showing the location of launch or launch control facilities have not been made available by the U.S. Air Force. Rather, consultation occurs by providing proposed project facilities to the U.S. Air Force to review, and then the U.S. Air Force identifies any potential issues in relation to military assets. In other words, based on NG Renewable’s past experience, developers do not have access to official maps or data showing the location of ICBM launch and launch control facilities, so would not be able to identify whether the proposed Avoidance Area was present at a potential site until well into project development. Therefore, if the Commission adds N.D.A.C. § 69-06-08-01(3)(g) as an Avoidance Area, NG Renewables respectfully requests that the Commission ask the U.S. Air Force to make readily available to developers maps and other information

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952.988.9000 | WWW.NATIONALGRIDRENEWABLES.COM

North Dakota Public Service Commission
Page 2
December 2, 2020

regarding the location of ICBM launch and launch control facilities so that the location of Avoidance Areas can be identified early in project siting.

Second, as currently proposed, the addition to N.D.A.C. § 69-06-08-01(3) would apply to all energy conversion facilities. However, we are not aware of any concerns raised by the U.S. Air Force regarding non-wind energy conversion facilities, such as solar energy facilities. Thus, if the proposed rule change is adopted, NG Renewables respectfully requests that the Commission limit its application to wind energy facilities.

NG Renewables appreciates the opportunity to provide these comments. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Schmit". The signature is written in a cursive, flowing style.

Melissa Schmit,
Director, Permitting

Email: ndpsc@nd.gov

Mailing Address:

North Dakota Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505

November 30, 2020

Re: Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking
Case No. PU-20-422

Dear Commissioners:

We are participating landowners in the Ruso Wind Project in Ward County, North Dakota. We understand the Commission has proposed a change to its siting rules that could negatively affect the project and are providing these comments regarding the proposed rule change.

The project has been under development since 2016, and we understand it has conducted extensive site analysis and has nearly completed the Commission's permitting process. We also understand the project coordinated with the Minot Air Force Base and the Department of Defense to avoid impacts to the military's operations. At this point, the project is nearing the finish line – something we have been looking forward to for a while.

If the proposed change making the area within two nautical miles of an intercontinental ballistic missile (ICBM) launch or launch control an "avoidance area" is adopted and applied to the project, we understand that further analysis and project adjustments would be needed to comply. Given all the work that has been done to date to complete the Commission's permitting process, it seems the rules shouldn't change so late in the process. Also, given the sign-off that has already received from the Minot Air Force Base and the Department of Defense on the project, it also doesn't seem necessary to apply such setbacks to the project.

We also ask the Commission to consider the impact the proposed rule change would have on North Dakota landowners' rights to use and develop their land. The proposed rule change would potentially preclude landowners within a 16.5 square mile area around a single ICBM launch or launch control facility from using their land for wind development. We also understand that there are a significant number of ICBM facilities in North Dakota, so a significant number of acres and landowners would be affected by this rule. The developers of the Ruso Wind Project informed us about the proposed rule change because of the potential effect on the project, but a lot of affected landowners likely aren't aware of the proposed rule change or its potential impact.

As participating landowners, we see the benefits of the Ruso Wind Project for ourselves, our county, and our state. The project will provide a steady income source, a new tax source, and job opportunities within our community. We also believe that the developers of the project have responsibly sited the project to meet the Commission's rules and has done so in coordination with the

Minot Air Force Base and the Department of Defense. For these reasons, we encourage the Commission to consider the impact of the proposed rule change on the Ruso Wind Project.

Sincerely,

Howard Rodgers

Janet Rodgers

Daniel Babluto

Cynthia Baklenko

Darren Kauf

Ray Schultz

Ronald J. Sauck

Francis Sauck

Bria Berg

Jana Berg

Jayce Berg

Zell Berg

Denis Berg

Terre Berg

M. A. Krueger

Lisa Krueger

December 3, 2020

VIA E-MAIL (ndpsc@nd.gov)

North Dakota Public Service Commission
c/o Mr. Steven Kahl, Executive Secretary
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

**RE: Public Service Commission
Energy Conversion Facility Siting Criteria Rulemaking
Case No. PU-20-422**

Dear Mr. Kahl:

Attached for filing in the above-referenced rulemaking docket are Ruso Wind Partners, LLC's comments. If you have any questions, please let me know.

Sincerely,



Mollie M. Smith

Direct Dial: 612.492.7270

Email: msmith@fredlaw.com

MMS:rg:71619379

Encl.

cc: Wells McGiffert (w/ encl.)
Matt Pohl (w/ encl.)
Lyssa Supinski (w/ encl.)

December 3, 2020

North Dakota Public Service Commission
c/o Mr. Steven Kahl, Executive Secretary
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

**RE: Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking
Case No. PU-20-422**

Dear Commissioners:

The North Dakota Public Service Commission (“Commission”) has proposed changes to N.D.A.C. Article 69-06 in the above-referenced rulemaking docket. Ruso Wind Partners, LLC (“Ruso Wind”) respectfully provides the following comments regarding the proposed change to N.D.A.C. § 69-06-08-01(3).

Ruso Wind, which was recently acquired by ALLETE Clean Energy (“ACE”), is developing the Ruso Wind Project (“Project”) in Ward County, North Dakota. Ruso Wind currently has a Certificate of Site Compatibility Application (“Application”) for the Project pending before the Commission (*see* Case No. PU-19-028). As background, Ruso Wind filed its Application on January 21, 2019, a public hearing was held on the Project’s Application on June 17, 2019, and a Notice of Opportunity for Hearing was issued on November 7, 2019 with no comments or requests for hearing submitted in response. On March 4, 2020, the Commission considered a motion to issue an order granting a permit to Ruso Wind, which failed 2-1 due to differences of opinion on the application of the light-mitigating technology statute. On May 5, 2020, Ruso Wind requested that the Application be held in abeyance until after completion of the 2021 North Dakota legislative session to allow time for a legislative change to the light-mitigating technology statute, and the Commission granted that request on May 27, 2020. At this time, Ruso

Wind understands that the only remaining siting-related issue for the Project concerns light-mitigation.

In the current rulemaking process, the Commission proposes to add the following to N.D.A.C. § 69-06-08-01(3) as an avoidance area: “g. Areas within 2 nautical miles of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.”

During the November 24, 2020 public hearing on the proposed changes to N.D.A.C. Article 69-06, the Commission indicated that Ruso Wind's Project may have led the U.S. Air Force ("USAF") to request the proposed setback. Wells McGiffert with ACE noted during the November 24th public hearing that Ruso Wind did consult with the USAF and the Federal Aviation Administration ("FAA") in developing the Project, and the Commission encouraged Ruso Wind to submit additional information regarding its coordination efforts and its concerns regarding the proposed rule change.

An overview of Ruso Wind's coordination efforts with the FAA, USAF, and the Department of Defense ("DoD") is provided below (copies of referenced filings from Case No. PU-19-028 are attached):

- March 13, 2018: Ruso Wind submitted a layout to the FAA for turbines up to 600 feet in height located across the original Project footprint. See Attachment 1 (Hearing Exhibit 21 – FAA Correspondence). As part of the FAA's review, the FAA initiates formal review of the proposed turbine locations by the DoD Clearinghouse, which consults with applicable groups within the DoD.
- August 24, 2018: Ruso Wind sent agency consultation letters, including a map of the Project study area, to multiple agencies/entities seeking input. Letters were sent to Daniel Lewis and Cy Munos with the Minot Air Force Base ("Minot AFB"), as well as to the Grand Forks Air Force Base. See Attachment 2 (Appendix C to Application).
- August 31, 2018: Ruso Wind sent a second agency consultation letter with a revised study area that included the proposed 230-kilovolt transmission line. The letter was sent to the same recipients as the August 24, 2020 letter. See Attachment 2 (Appendix C to Application).
- September 10, 2018: In e-mail correspondence, the USAF noted that certain turbine locations were within 1,200 feet of the launch facilities, and noted concerns with interactions between Project facilities and HICS cables. The USAF also stated that the Project had been sent to the DoD Clearinghouse, and that the information needed to be presented to the Installation Encroachment Management Team for input. Multiple USAF representatives were included on the e-mail, including Daniel Lewis with the Minot AFB. See Attachment 2 (Appendix C to Application).
- September 13, 2018: In e-mail correspondence, Cy Munos with the Minot AFB provided requirements for the transmission line (90 degree crossing of USAF buried cable and preferred 100 feet separation of poles). See Attachment 2 (Appendix C to Application).

- October 2, 2018: The FAA issued Determinations of No Hazards (“DNHs”) for each turbine location submitted. *See Attachment 1* (Hearing Exhibit 21 – FAA Correspondence). During the FAA process, the DoD Clearinghouse did not identify objections to the proposed turbine locations.
- November 20, 2018: Ruso Wind sent a third consultation letter with a revised Project layout. The letter was sent to the same recipients as the August 24 and 31, 2018 letters. *See Attachment 2* (Appendix C to Application).
- December 18, 2018: In e-mail correspondence, Ruso Wind provided a revised layout to the USAF. Multiple USAF representatives were included on the e-mail, including Daniel Lewis with the Minot AFB. *See Attachment 2* (Appendix C to Application).
- December 20, 2018: In e-mail correspondence, the USAF provided additional comments regarding the Project layout. Multiple USAF representatives were included on the e-mail, including Daniel Lewis and Cy Munos with the Minot AFB. No turbine-specific concerns were identified. *See Attachment 2* (Appendix C to Application).
- February 26, 2019: Ruso Wind submitted revised turbine locations to the FAA for turbines up to 600 feet in height and terminated the previously-issued DNHs. The revised turbine locations were within the Project footprint. *See Attachment 1* (Hearing Exhibit 21 – FAA Correspondence). As part of the FAA review, the FAA initiated another formal review by the DoD Clearinghouse.
- June 10, 2019: In connection with the FAA’s review of the revised turbine locations and the DoD Clearinghouse’s formal review, Ruso Wind received a notice of presumed risk letter (dated June 6, 2019) from the Office of the Assistant Secretary of Defense stating that the Project will have an adverse impact on helicopter flight missions, missile launch operations and Weather Radar (NEXRAD) operations conducted by the USAF if constructed as proposed. *See Attachment 1* (Hearing Exhibit 21 – FAA Correspondence).
- July 17 and 25, 2019: Ruso Wind engaged in mitigation response team (“MRT”) discussions organized by the DoD Siting Clearinghouse with USAF representatives from Global Strike Command, helicopter and security forces from Minot and F.E. Warren Air Force Bases regarding the Project. During those discussions, Ruso Wind agreed to remove five turbine locations. The USAF also requested night vision goggle

- (“NVG”) compatible lighting, and Ruso Wind agreed to this request. *See Attachment 3* (Late-Filed Exhibit 51(a)).
- August 8, 2019: With removal of five turbines, the DoD Clearinghouse released the remainder of the proposed wind turbines to the FAA with a response of “No Objection, with Provisions” (NVG compatible lighting). *See Attachment 3* (Late-Filed Exhibit 51(a)).
 - August 9, 2019: In a letter, the Office of the Assistant Secretary of Defense thanked Ruso Wind for its participation in the MRT, and stated that, as a result of those discussions, “construction of the Ruso wind project, as proposed, will not present an adverse impact to military operations.” The letter also stated that this finding had been provided to the FAA. *See Attachment 3* (Late-Filed Exhibit No. 51(a)).
 - November 1, 2019: The FAA issued DNHs for all turbine locations, conditioned on use of NVG compatible lighting and standard lighting. *See Attachment 3* (Late-Filed Exhibit No. 51(e)).

To summarize the timeline detailed above, Ruso Wind:

- Submitted preliminary turbine locations to the FAA in March 2018, for which the FAA issued DNHs in October 2018 – no objections were noted during the DoD Clearinghouse’s formal review;
- Corresponded via letter and e-mail directly with the USAF, including with Minot AFB representatives, in August-December 2018, with no turbine-specific issues raised;
- Submitted a revised turbine layout to the FAA in February 2019, which resulted in a notice of objection from the USAF/DoD in June 2019 during the DoD Clearinghouse’s formal review;
- Immediately engaged in the MRT process with the USAF/DoD in July 2019, and adjusted the Project layout to address USAF/DoD concerns; as a result, in August 2019, the USAF/DoD issued a finding that the Project as proposed “will not present an adverse impact to military operations,” and the FAA issued DNHs in November 2019.

Thus, Ruso Wind coordinated directly with the USAF and the Project received DNHs from the FAA in 2018. Further, when concerns regarding the Project were raised by the USAF/DoD, Ruso Wind took steps to promptly address those concerns to the satisfaction of the USAF, the DoD, and the FAA.

If the proposed change to N.D.A.C. § 69-06-08-01(3) is adopted and applied to Ruso Wind's Project, it will require modifications to the Project's layout and potentially affect the viability of the Project. Given the extensive coordination Ruso Wind has undertaken with the USAF (including the Minot AFB) and the DoD to-date, the USAF/DoD's determination that the Project's current layout "will not present an adverse impact to military operations," and where the Project is in the siting process, imposing the proposed setback on the Project at this point would result in unnecessary negative impacts to the Project. For these reasons, Ruso Wind requests that the Commission consider the following alternatives:

1. Not adopt the proposed change to N.D.A.C. § 69-06-08-01(3) and, instead, add consultation with the USAF/DoD to the policy criteria in N.D.A.C. § 69-06-08-01(6). Doing so would emphasize the importance of consulting with these entities, but would also provide the Commission with the flexibility to consider the specific circumstances of each project and balance all interests when issuing a siting decision. Further, since some generation projects (e.g., solar projects) are not anticipated to be of concern to the USAF/DoD, including consultation with these entities in the policy criteria provides the Commission with more flexibility to determine whether the criterion applies to a particular type of generation project.
2. Postpone a decision on the proposed change to N.D.A.C. § 69-06-08-01(3) to allow input from a broader group of stakeholders. Given the number of ICBM facilities in North Dakota, a four nautical mile setback around such facilities would preclude landowners across a large swath of the state from utilizing their land for wind development (or, as written, potentially any energy facility generation development). We understand the Commission has engaged with the USAF and the wind industry on the proposed rule, but many landowners who would be affected may not be aware of or understand the implications of the proposed setback. Engaging in further discussions with a broader group of stakeholders would help ensure all viewpoints are considered before a final decision is made.
3. If a proposed change to N.D.A.C. § 69-06-08-01(3) is adopted, clarify either in the rules or in the order adopting the rules that the rule changes do not apply to siting applications pending as of the date the notice of rulemaking was issued in Case No. PU-20-422. As an example, the siting application for Ruso Wind's Project has been pending since early 2019, a public hearing has been conducted, a subsequent notice of opportunity for hearing was issued with no requests or comments, and only one issue remains unresolved. Applying the proposed rules to the Project at this point in the process would essentially start the process over, even though Ruso could not have known or planned for the proposed rule changes at the time it submitted its Application. As written, it is not clear that the proposed rule changes would not apply to pending applications; therefore, Ruso Wind requests that the Commission clarify that the rules do not apply to siting applications pending as of the date the rulemaking notice was issued.



30 West Superior Street, Suite 200 Duluth, Minnesota 55802-2093 218.355.3232 | www.alletecleanenergy.com

Ruso Wind appreciates the opportunity to provide these comments and would be happy to address any questions the Commission may have.

Sincerely,

A handwritten signature in blue ink that reads "Wells McGiffert". The signature is written in a cursive style.

Wells McGiffert
Business Development Vice President

Attachment 1

Hearing Exhibit 21 - FAA Correspondence

From: [Bowker, Alexandria C. \(SPC\)](#)
To: [Ashley Ross; Mikayla Boche](#)
Cc: [Wash, Elizabeth H. \(SPC\)](#)
Subject: Ruso PSC Permit-FAA Update
Date: Wednesday, April 24, 2019 9:14:43 PM
Attachments: [image001.gif](#)
[Project Submission Success br Project Name SOUTH-000506709-19.pdf](#)

Ashley and Mikayla,

On February 26, 2019, I submitted our revised turbine locations to the FAA and terminated the previous locations. The turbines have been assigned aeronautical study numbers 2019-WTE-1173-OE through 2019-WTE-1238-OE. I have reached out to the FAA asking for a status update and a timeline on when we can expect to receive a determination.

Thanks,

Alex

Alex C. Bowker

Business Development

Southern Power

O: 205.992.0163

M: 205.915.9519

southernpowercompany.com



66 PU-19-29 Filed 06/17/2019 Pages: 14
Exhibit 21 - FAA correspondence
Ruso Wind Partners, LLC

74 PU-19-28 Filed 06/17/2019 Pages: 14
Exhibit 21 - FAA correspondence
Ruso Wind Partners, LLC



Project Submission Success
Project Name: SOUTH-000506709-19

Project SOUTH-000506709-19 has been submitted successfully to the FAA.

Your filing is assigned Aeronautical Study Number (ASN):

- 2019-WTE-1173-OE
- 2019-WTE-1174-OE
- 2019-WTE-1175-OE
- 2019-WTE-1176-OE
- 2019-WTE-1177-OE
- 2019-WTE-1178-OE
- 2019-WTE-1179-OE
- 2019-WTE-1180-OE
- 2019-WTE-1181-OE
- 2019-WTE-1182-OE
- 2019-WTE-1183-OE
- 2019-WTE-1184-OE
- 2019-WTE-1185-OE
- 2019-WTE-1186-OE
- 2019-WTE-1187-OE
- 2019-WTE-1188-OE
- 2019-WTE-1189-OE
- 2019-WTE-1190-OE
- 2019-WTE-1191-OE
- 2019-WTE-1192-OE
- 2019-WTE-1193-OE
- 2019-WTE-1194-OE
- 2019-WTE-1195-OE
- 2019-WTE-1196-OE
- 2019-WTE-1197-OE
- 2019-WTE-1198-OE
- 2019-WTE-1199-OE
- 2019-WTE-1200-OE
- 2019-WTE-1201-OE
- 2019-WTE-1202-OE
- 2019-WTE-1203-OE
- 2019-WTE-1204-OE
- 2019-WTE-1205-OE
- 2019-WTE-1206-OE
- 2019-WTE-1207-OE
- 2019-WTE-1208-OE
- 2019-WTE-1209-OE
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- 2019-WTE-1228-OE
- 2019-WTE-1229-OE
- 2019-WTE-1230-OE
- 2019-WTE-1231-OE
- 2019-WTE-1232-OE
- 2019-WTE-1233-OE
- 2019-WTE-1234-OE
- 2019-WTE-1235-OE
- 2019-WTE-1236-OE
- 2019-WTE-1237-OE
- 2019-WTE-1238-OE

Please refer to the assigned ASN on all future inquiries regarding this filing.

Please return to the system at a later date for status updates.

It is the responsibility of each e-filer to exercise due diligence to determine if coordination of the proposed construction or alteration is necessary with their state aviation department. Please use the link below to contact

2/6/2019

Project Submission Success
Project Name: SOUTH-000506709-19

your state aviation department to determine their requirements:
State Aviation Contacts

To ensure e-mail notifications are delivered to your inbox please add noreply@faa.gov to your address book. Notifications sent from this address are system generated. FAA e-mails and replies to this address will NOT be read or forwarded for review. Each system generated e-mail will contain specific FAA contact information in the text of the message.



Mikayla Boche

From: Bowker, Alexandria C. (SPC) <acbowker@southernco.com>
Sent: Thursday, April 25, 2019 8:19 AM
To: Ashley Ross; Mikayla Boche
Cc: Wash, Elizabeth H. (SPC)
Subject: RE: Ruso PSC Permit-FAA Update
Attachments: RE: Status Update for 2019-WTE-1173-OE through 2019-WTE-1238-OE

From: Bowker, Alexandria C. (SPC)
Sent: Wednesday, April 24, 2019 9:15 PM
To: Ashley Ross <Ashley.Ross@kljeng.com>; Mikayla Boche <Mikayla.Boche@kljeng.com>
Cc: Wash, Elizabeth H. (SPC) <ewash@southernco.com>
Subject: Ruso PSC Permit-FAA Update

Ashley and Mikayla,
On February 26, 2019, I submitted our revised turbine locations to the FAA and terminated the previous locations. The turbines have been assigned aeronautical study numbers 2019-WTE-1173-OE through 2019-WTE-1238-OE. I have reached out to the FAA asking for a status update and a timeline on when we can expect to receive a determination.
Thanks,
Alex

Alex C. Bowker
Business Development
Southern Power
O: 205.992.0163
M: 205.915.9519
southernpowercompany.com



From: Lan.Norris@faa.gov
To: [Bowker, Alexandria C. \(SPC\)](mailto:Alexandria.C.Bowker@southernco.com)
Cc: rick.coles@capitolairspace.com; [Berry, Morgan L. \(SPC\)](mailto:Morgan.L.Berry@southernco.com); [Crutch, Anthony \(SPC\)](mailto:Anthony.Crutch@southernco.com)
Subject: RE: Status Update for 2019-WTE-1173-OE through 2019-WTE-1238-OE
Date: Thursday, April 25, 2019 7:56:38 AM
Attachments: [image001.gif](#)

EXTERNAL MAIL: Caution Opening Links or Files

Alex,

We are waiting on responses from the USAF and DOD. I expect they will complete their analysis soon. Feel free follow-up periodically with the FAA Technician, Cesar.CTR.perez@faa.gov for updates/status.

VR,

Lan M. Norris

Federal Aviation Administration
AJV-15 / Obstruction Evaluation Group
Wind Turbine Specialist
AOR: AZ, KS, MA, NV, NM, ND, OR, PA, SD, WA
1701 Columbia Avenue
College Park, GA 30337
Lan.norris@faa.gov
(404) 305-6645
<https://oeaaa.faa.gov> [oeaaa.faa.gov]

From: Bowker, Alexandria C. (SPC) <acbowker@southernco.com>
Sent: Wednesday, April 24, 2019 3:54 PM
To: Norris, Lan (FAA) <Lan.Norris@faa.gov>
Cc: Rick Coles <rick.coles@capitolairspace.com>; Berry, Morgan L. (SPC) <MLBERRY@southernco.com>; Crutch, Anthony (SPC) <ACRUTCH@southernco.com>
Subject: Status Update for 2019-WTE-1173-OE through 2019-WTE-1238-OE

Lan,

I submitted the revised turbine locations to the FAA for the Ruso Wind Partners, LLC project and terminated the previous locations. The turbines were assigned aeronautical study numbers 2019-WTE-1173-OE through 2019-WTE-1238-OE. Please provide a status update and a timeline on when we can expect to receive a determination.

Thanks,
Alex

Alex C. Bowker
Business Development
Southern Power

O: 205.992.0163

M: 205.915.9519

southernpowercompany.com



From: [Bowker, Alexandria C. \(SPC\)](#)
To: [Ashley Ross](#); [Mikayla Boche](#); [Smith, Mollie](#)
Cc: [Wash, Elizabeth H. \(SPC\)](#)
Subject: RE: Ruso PSC Permit-FAA Update
Date: Tuesday, May 7, 2019 1:41:04 PM
Attachments: [image001.gif](#)

Ashley and Mikayla,

On March 13, 2018, Ruso Wind Partners submitted a layout to the FAA that included turbines above 600 feet placed across the entire project footprint. I have added our submittal to the data room. On October 2, 2018, we received Determinations of No Hazard for each location. On February 6, 2018, I submitted our revised turbine locations to the FAA and terminated the previous locations. The turbines were assigned aeronautical study number which can be found in the submittal information in the data room.

Thanks,
Alex

From: Bowker, Alexandria C. (SPC)
Sent: Tuesday, April 30, 2019 9:26 AM
To: Ashley Ross <Ashley.Ross@kljeng.com>; Mikayla Boche <Mikayla.Boche@kljeng.com>
Cc: Wash, Elizabeth H. (SPC) <ewash@southernco.com>
Subject: FW: Ruso PSC Permit-FAA Update

Ashley and Mikayla,

I have attached an email from the FAA providing a status update.

Thanks,
Alex

From: Bowker, Alexandria C. (SPC)
Sent: Thursday, April 25, 2019 8:19 AM
To: Ashley Ross <Ashley.Ross@kljeng.com>; Mikayla Boche <Mikayla.Boche@kljeng.com>
Cc: Wash, Elizabeth H. (SPC) <ewash@southernco.com>
Subject: RE: Ruso PSC Permit-FAA Update

From: Bowker, Alexandria C. (SPC)
Sent: Wednesday, April 24, 2019 9:15 PM
To: Ashley Ross <Ashley.Ross@kljeng.com>; Mikayla Boche <Mikayla.Boche@kljeng.com>
Cc: Wash, Elizabeth H. (SPC) <ewash@southernco.com>
Subject: Ruso PSC Permit-FAA Update

Ashley and Mikayla,

On February 26, 2019, I submitted our revised turbine locations to the FAA and terminated the previous locations. The turbines have been assigned aeronautical study numbers 2019-WTE-1173-OE through 2019-WTE-1238-OE. I have reached out to the FAA asking for a status update and a timeline on when we can expect to receive a determination.

Thanks,
Alex

Alex C. Bowker
Business Development
Southern Power
O: 205.992.0163

M: 205.915.9519

southernpowercompany.com





Federal Aviation
Administration

<< OE/AAA

Project Submission Success
Project Name: SOUTH-000460319-18

Project SOUTH-000460319-18 has been submitted successfully to the FAA.

Your filing is assigned Aeronautical Study Number (ASN):

- 2018-WTE-2964-OE
- 2018-WTE-2965-OE
- 2018-WTE-2966-OE
- 2018-WTE-2967-OE
- 2018-WTE-2968-OE
- 2018-WTE-2969-OE
- 2018-WTE-2970-OE
- 2018-WTE-2971-OE
- 2018-WTE-2972-OE
- 2018-WTE-2973-OE
- 2018-WTE-2974-OE
- 2018-WTE-2975-OE
- 2018-WTE-2976-OE
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- 2018-WTE-2990-OE
- 2018-WTE-2991-OE
- 2018-WTE-2992-OE
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- 2018-WTE-3027-OE
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- 2018-WTE-3029-OE
- 2018-WTE-3030-OE
- 2018-WTE-3031-OE
- 2018-WTE-3032-OE

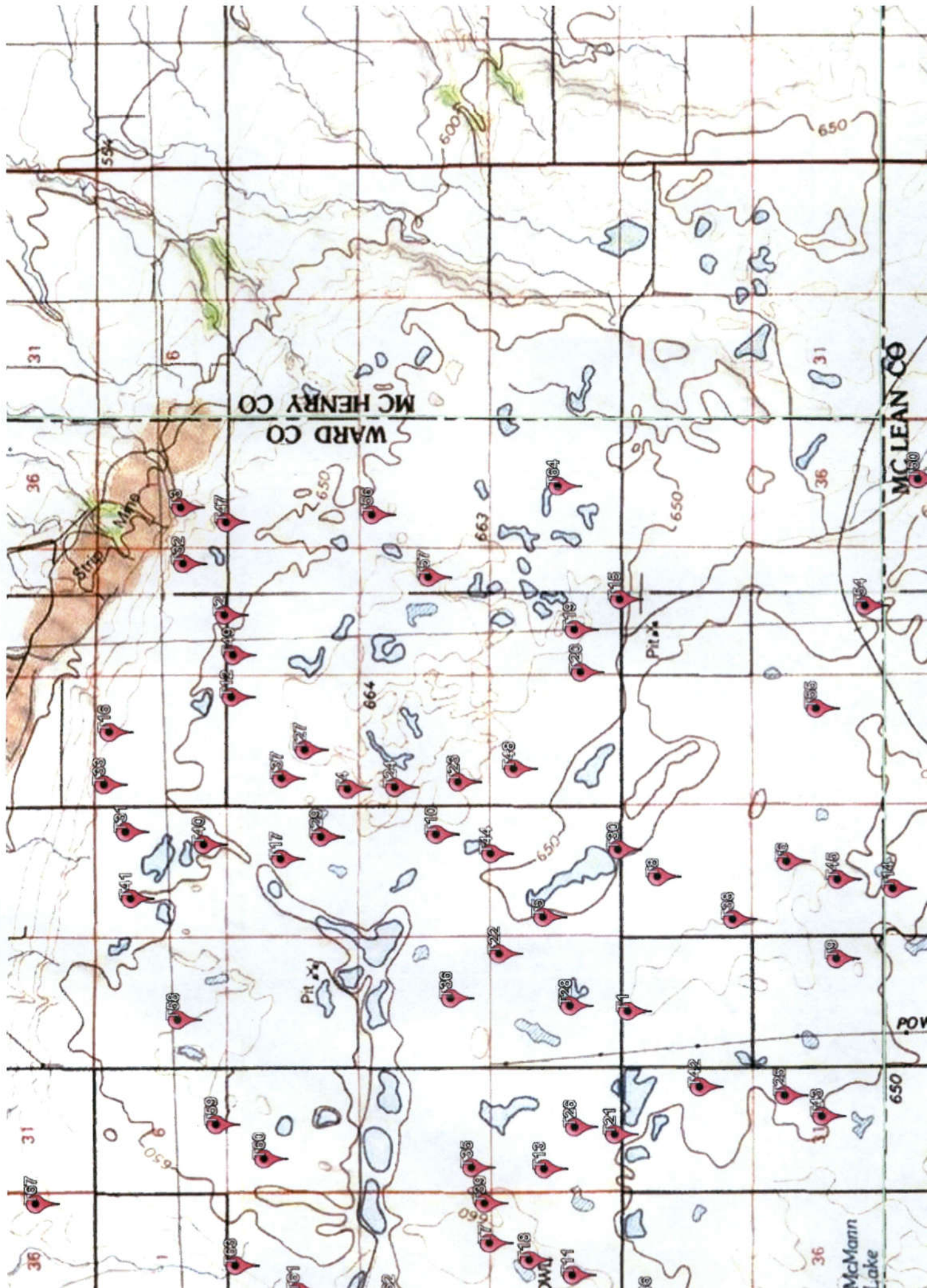
2018-WTE-3033-OE
2018-WTE-3034-OE

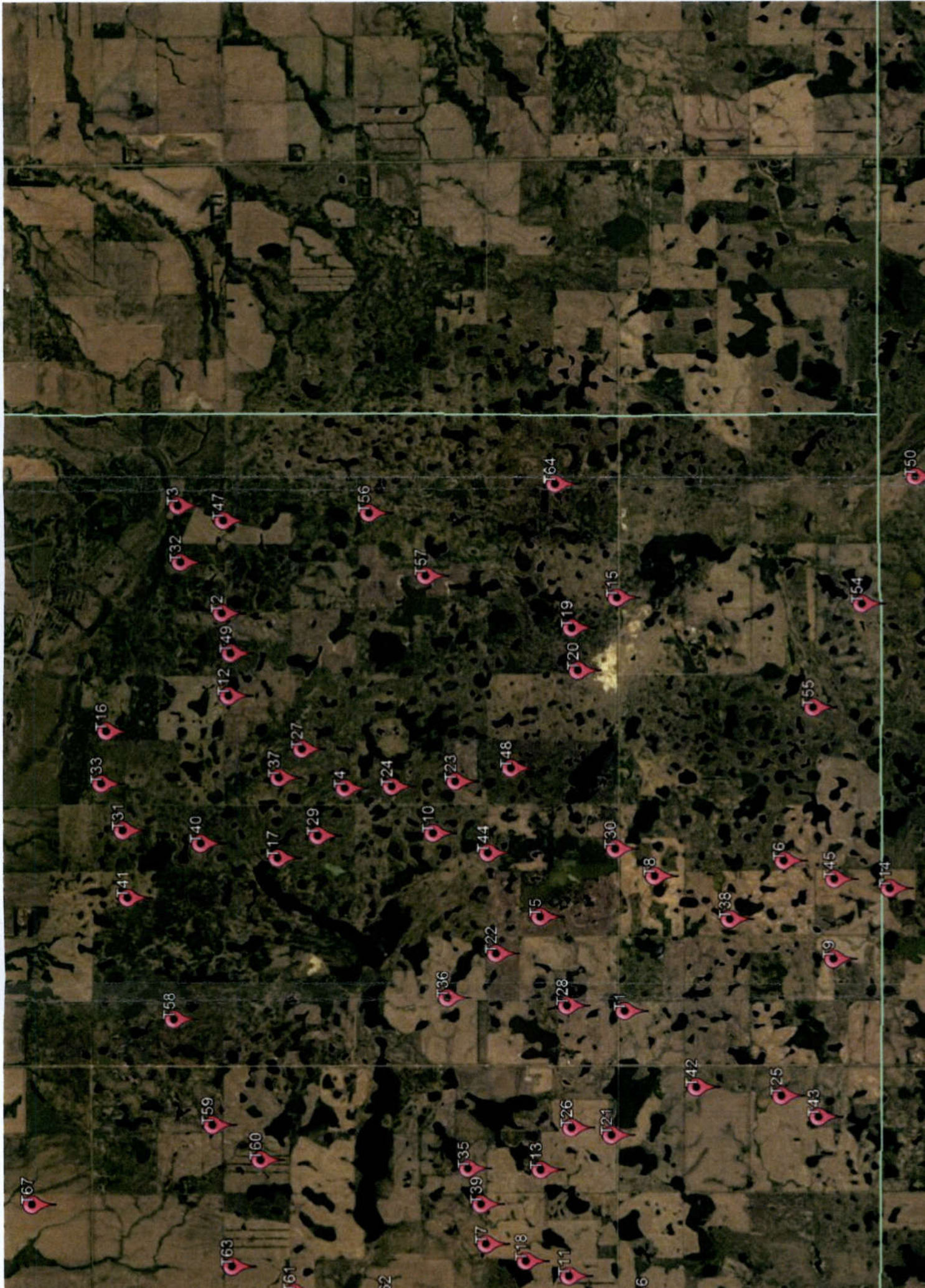
Please refer to the assigned ASN on all future inquiries regarding this filing.

Please return to the system at a later date for status updates.

It is the responsibility of each e-filer to exercise due diligence to determine if coordination of the proposed construction or alteration is necessary with their state aviation department. Please use the link below to contact your state aviation department to determine their requirements:
State Aviation Contacts

To ensure e-mail notifications are delivered to your inbox please add noreply@faa.gov to your address book. Notifications sent from this address are system generated FAA e-mails and replies to this address will NOT be read or forwarded for review. Each system generated e-mail will contain specific FAA contact information in the text of the message.





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MEMO

TO: FILE

FROM: Alex C. Bowker

DATE: June 13, 2019

SUBJECT: Ruso PSC Permit – FAA Update

On 3/13/2018, Ruso Wind Partners, LLC submitted a layout to the FAA that included turbines up to 600 feet placed across the entire project footprint. On 10/2/2018, we received Determinations of No Hazard for each location. On 2/26/2019, Ruso Wind Partners, LLC submitted our revised turbine locations to the FAA and terminated the previous locations. The revised turbine locations were within the original project footprint and the height of the turbines did not change from the March 2018 FAA submission (up to 600 ft). The turbines have been assigned aeronautical study numbers 2019-WTE-1173-OE through 2019-WTE-1238-OE. On 6/10/2019, Ruso Wind Partners, LLC received a Notice of Presumed Risk letter from the Office of the Assistant Secretary of Defense notifying us that the project will have an adverse impact on helicopter flight missions, missile launch operations and Weather Radar (NEXRAD) operations conducted by the US Air Force, if constructed as proposed. The Notice of Presumed Risk letter was also sent to the North Dakota State Governor. The Department of Defense (DOD) had an opportunity to review our March 2018 layout submittal and did not raise any of the adverse impacts to the US Air Force during the FAA's initial findings or the Determination of No Hazard issuance. On 6/10/2019, Ruso Wind Partners, LLC's consultant, Capitol Airspace Group, had a call with the DOD and the Minot Airforce Base. The Minot Airforce Base representative did not have detailed information on the issues with him. Capitol Airspace informed both parties that Ruso Wind Partners, LLC's project boundary does not directly include any missile silos, but is nearly adjacent to one and about half a mile from a second one. Additionally, per the Minot Airforce Base's instructions, Ruso Wind Partners, LLC used a setback of 1200 feet from the missile silos, plus space for the turbine blades. Ruso Wind Partners, LLC's current layout has turbine foundations no closer than 2400 feet to a missile silo, so about 950 extra feet of buffer (given blade length of less than 250 feet). Capitol Airspace also requested to kick off the MRT (Mitigation Resource Team) process on behalf of Ruso Wind Partners, LLC. Since the meeting on 6/10/2019, Ruso Wind Partners, LLC nor Capital Airspace has heard from the DOD or Minot Airforce Base on next steps. Additionally, on 6/13/2019, Ruso Wind Partners, LLC left a message with Governor Burgum's office. Ruso Wind Partners, LLC will be communicating with the Governor our intent to enter into mitigation discussions with the Minot Air Force through the MRT process and will also be providing our contact information should the office have any questions or concerns.



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
3500 DEFENSE PENTAGON
WASHINGTON, DC 20301-3500

SUSTAINMENT

June 6, 2019

Ms. Rachel Garrett
Southern Power - Ruso, ND
3535 Colonnade Parkway, BIN S-855-EC
Birmingham, AL 35243

Reference – Aeronautical Study Number: 2019-WTE-1173-OE

Dear Ms. Rachel Garrett,

The Department of Defense (DoD) Military Aviation and Installation Assurance Siting Clearinghouse has received notice from the Federal Aviation Administration pursuant to section 44718 of title 49, United States Code, of an energy project, the Southern Power - Ruso, ND project. Based on our preliminary review of your wind energy project, we have found that it will have an adverse impact on helicopter flight missions, missile launch operations and Weather Radar (NEXRAD) operations conducted by the US Air Force, if constructed as proposed.

This notice of presumed risk for the wind project, required by section 183a(c) of Title 10, United States Code, requests that you enter into discussions of possible mitigation actions with the Department of the Air Force.

Please let us know within 30 days from receipt of this letter if you are willing to enter into mitigation discussions. As also required by section 183a(c), DoD is providing a copy of this letter to the North Dakota Governor's office and requesting any comments the Governor believes of relevance to the application.

If you agree to enter into mitigation discussions, the Clearinghouse will task the US Air Force to establish a mitigation response team and will provide you the contact information for the primary Air Force point of contact. The Clearinghouse contact is Mr. Steven Sample, phone 703-571-0076, or email steven.j.sample4.civ@mail.mil.

Ronald E. Tickle
Executive Director
Military Aviation and Installation Assurance Siting
Clearinghouse

Copy to:
ODASD(FE&T)
SAF/IEI
FAA OE

Attachment 2

Appendix C to Application - USAF Correspondence

Appendix C. Scoping Package and
Responses



August 24, 2018

«First_Name» «Last_Name», «Title»
«Department»
«Agency»
«Address»
«City», «State» «Zip»

Re: Ruso Wind Project
Ruso Wind Partners, LLC
Ward, McLean and McHenry Counties, North Dakota

Dear «Salutation» «Last_Name»:

On behalf of Ruso Wind Partners, LLC, KLJ is preparing applications for the Ruso Wind Project pursuant to the North Dakota Energy Conversion and Transmission Facility Siting Act for consideration by the North Dakota Public Service Commission. The applications include the development of a wind farm and associated transmission line in Ward, McLean and McHenry Counties, North Dakota. Please refer to the enclosed ***Project Location Map***.

The Ruso Wind Project is expected to include approximately 52 turbines capable of generating approximately 200 megawatts of electric power. The power is expected be interconnected to the grid via a new 230-kilovolt transmission line approximately 6 to 8 miles in length. Construction of the project is expected to begin during the fall of 2020, with the wind farm expected to become operational by the end of 2021. No federal funding is anticipated.

We are soliciting your views and comments on the proposed project. We are particularly interested in any property within the project area that your agency may own or have an interest in. We would also appreciate being made aware of any proposed development your agency may be contemplating within or near the project area. Any information that might help us with the applications would be appreciated.

We request that you please provide any comments or information you may have regarding the Ruso Wind Project to our office on or before September 24, 2018. If you have any questions or need further information, please contact me at 701-250-5961 or ashley.ross@kljeng.com. Thank you for your time and cooperation.

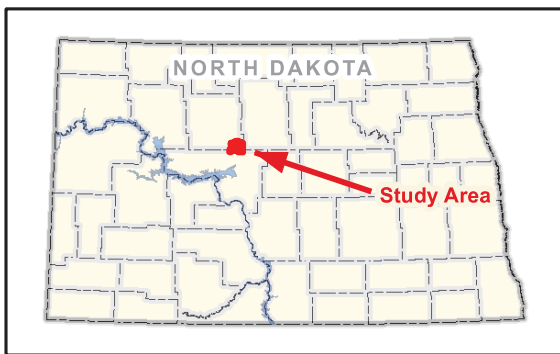
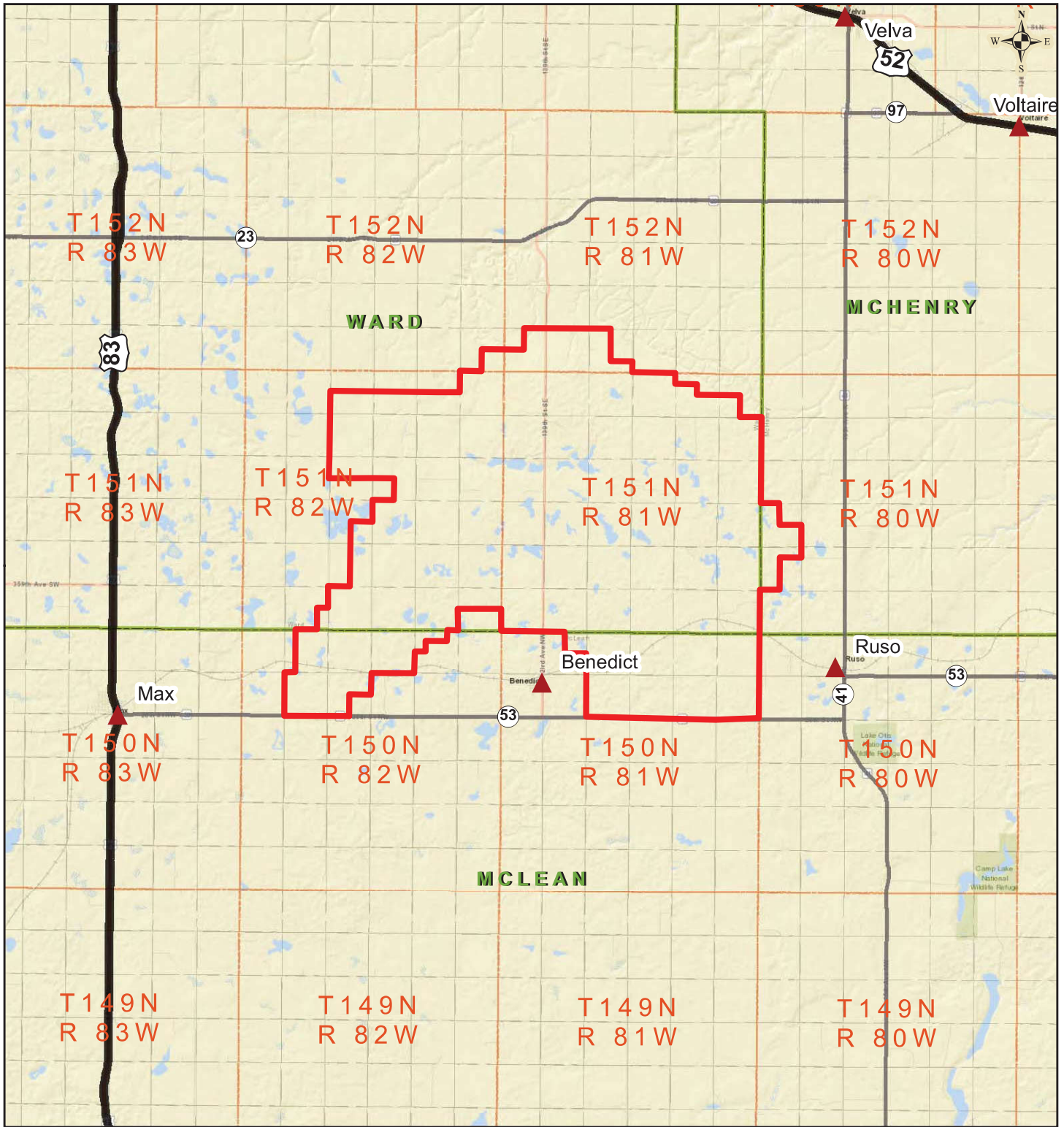
Sincerely,

KLJ

A handwritten signature in blue ink that reads "Ashley Ross". The signature is written in a cursive, flowing style.

Ashley Ross, Project Manager

Enclosure: Project Location Map



Ruso Wind Project

Ward, McLean & McHenry Counties,
North Dakota

- US Highways
- ND Highways
- County Boundary
- PLSS Townships
- PLSS Sections
- Cities
- Study Area



8/22/2018



August 31, 2018

«First_Name» «Last_Name», «Title»
«Department»
«Agency»
«Address»
«City», «State» «Zip»

Re: Ruso Wind Project
Ruso Wind Partners, LLC
Ward, McLean and McHenry Counties, North Dakota

Dear «Salutation» «Last_Name»:

In a letter dated August 24, 2018, sent on behalf of Ruso Wind Partners, LLC, we announced the preparation of applications for the Ruso Wind Project pursuant to the North Dakota Energy Conversion and Transmission Facility Siting Act for the development of a wind farm and associated transmission line in Ward, McLean and McHenry Counties, North Dakota. This letter is intended to inform you of the revised study area to account for the proposed 230-kilovolt transmission line. The transmission line is expected to be approximately 6 to 8 miles long within Ward County and McHenry Counties. Please refer to the enclosed ***Project Location Map***.

We are soliciting your views and comments on the proposed project. We are particularly interested in any property within the study area that your agency may own or have an interest in. We would also appreciate being made aware of any proposed development your agency may be contemplating within or near the study area. Any information that might help us with the applications would be appreciated.

We request that you please provide any comments or information you may have regarding the Ruso Wind Project to our office on or before September 24, 2018, in effort to maintain the projects existing timeline. If you have any questions or need further information, please contact me at 701-250-5961 or ashley.ross@kljeng.com. Thank you for your time and cooperation.

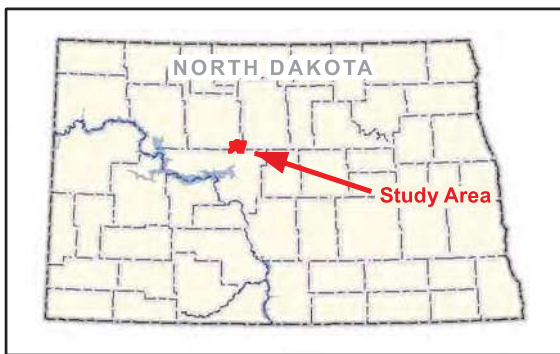
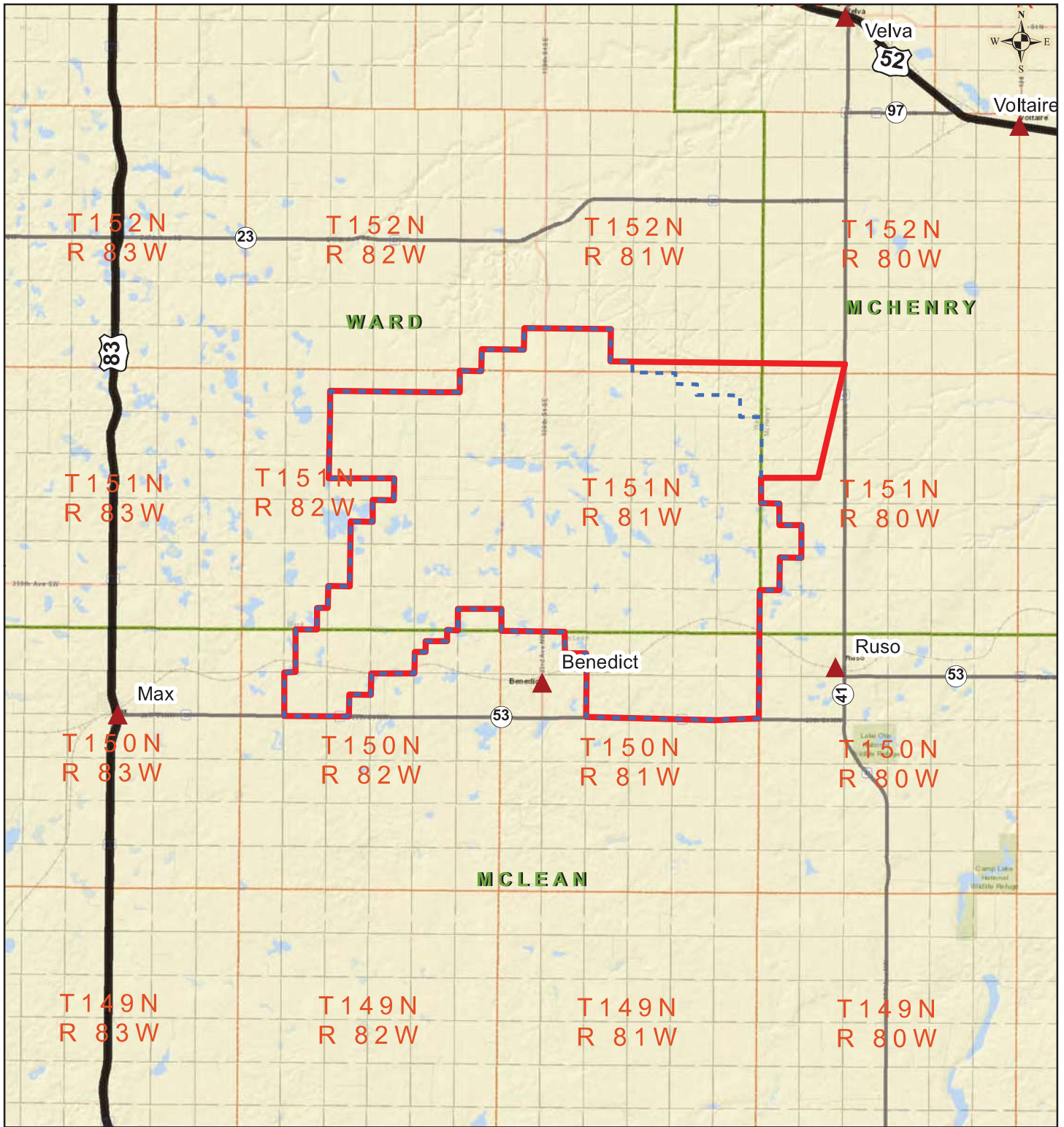
Sincerely,

KLJ

A handwritten signature in blue ink that reads "Ashley Ross". The signature is written in a cursive, flowing style.

Ashley Ross, Project Manager

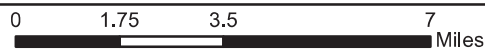
Enclosure: Project Location Map



Ruso Wind Project

Ward, McLean & McHenry Counties, North Dakota

- Revised Study Area
- Previous Study Area
- County Boundary
- PLSS Townships
- PLSS Sections
- US Highways
- ND Highways
- Cities



8/31/2018



November 20, 2018

«First_Name» «Last_Name», «Title»
«Department»
«Agency»
«Address»
«City», «State» «Zip»

Re: Ruso Wind Project
Ruso Wind Partners, LLC
Ward, McLean and McHenry Counties, North Dakota

Dear «Salutation» «Last_Name»:

In a letter dated August 24, 2018, sent on behalf of Ruso Wind Partners, LLC, we announced the preparation of applications for the Ruso Wind Project pursuant to the North Dakota Energy Conversion and Transmission Facility Siting Act for the development of a wind farm and associated transmission line in Ward, McLean and McHenry Counties, North Dakota. In a second letter dated August 31, 2018, we provided a revised study area to account for the proposed 230-kilovolt transmission line. This letter is intended to inform you of an additional revision to the study area to account for a revised project layout. Please refer to the enclosed ***Project Location Map***.

We are soliciting your views and comments on the proposed project. We are particularly interested in any property within the study area that your agency may own or have an interest in. We would also appreciate being made aware of any proposed development your agency may be contemplating within or near the study area. Any information that might help us with the applications would be appreciated.

We request that you please provide any comments or information you may have regarding the Ruso Wind Project to our office on or before December 20, 2018, in effort to maintain the projects existing timeline. If you have any questions or need further information, please contact me at 701-250-5961 or ashley.ross@kljeng.com. Thank you for your time and cooperation.

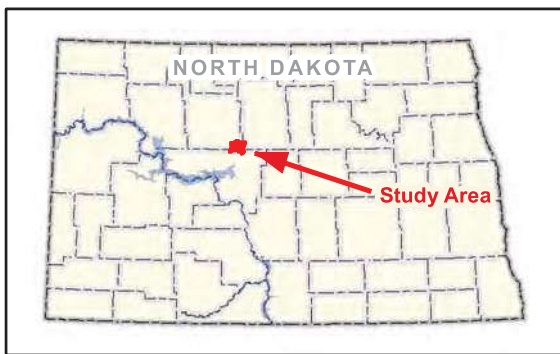
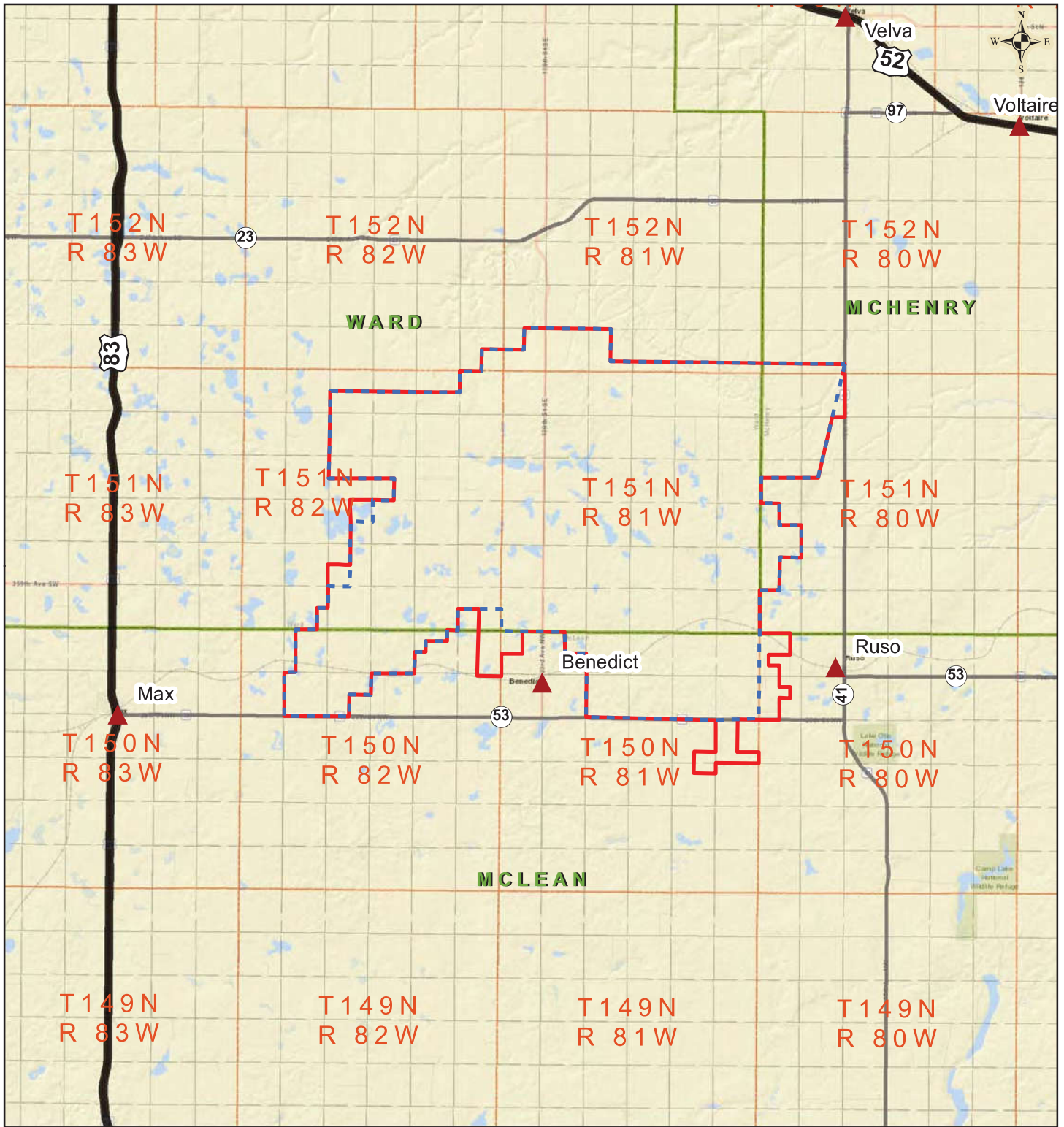
Sincerely,

KLJ

A handwritten signature in blue ink that reads "Ashley Ross". The signature is written in a cursive, flowing style.

Ashley Ross, Project Manager

Enclosure: Project Location Map



Ruso Wind Project

Ward, McLean & McHenry Counties, North Dakota

- | | | |
|---------------------|-------------|-----------------|
| Revised Study Area | Cities | County Boundary |
| Previous Study Area | US Highways | PLSS Townships |
| | ND Highways | PLSS Sections |



11/19/2018

Ruso Wind Project Scoping Letter Mailing List

Salutation	First Name	Last Name	Title	Department
Mr.	Kyle	Wanner	Director	
Mr.	Wayne	Stenehjem	Attorney General	
Mr.	Doug	Goehring	Agriculture Commissioner	
Mr.	Dave	Glatt	Chief	Environmental Health Section
Mr.	Christopher	Jones	Executive Director	
Ms.	Michelle	Kommer	Commissioner of Labor	
Mr.	Wayde	Sick	Director and Executive Officer	
Mr.	Jay	Schuler	Commissioner	
Ms.	Jodi	Smith	EIO Director & Commissioner of University and School Lands	
Mr.	Steve	Dyke	Conservation Supervisor	Conservation Section
Ms.	Karlene	Fine	Executive Director	
Governor	Doug	Burgum	Governor	
Mr.	Jim	Redding	District Engineer	Minot District Office
Ms.	Claudia	Berg	Director	
Mr.	Scott	Davis	Executive Director	
Ms.	Michelle	Kommer	Interim Executive Director	
Ms.	Melissa	Baker	Director	
Mr.	Dennis	Renner	Chairperson	
Mr.	Garland	Eberle	Chief Engineer and Secretary	
Sir or Madam			Deputy Base Civil Engineer	319 CES/CD
Mr.	Daniel	Lewis	PE	Chief Missile Engineering
Mr.	Cy	Munos	Cable Affairs Officer	91st Missile Maintenance Squadron
Mr.	Todd	Frerichs	Refuge Manager	Audubon Wetland Management District
Mr.	Frank	Durbian	Refuge Manager	J. Clark Salyer Wetland Management District
Mr.	Kevin	Shelley	Field Supervisor	ND Field Office
Ms.	Patricia	McQueary	ND State Regulatory Program Manager	ND Regulatory Office
Ms.	Laurie	Suttmeier	Manager	Dakota-Minnesota Airports District Office, BIS-ADO-60
Mr.	Barry	Suydam	Chairperson	
Mr.	Alan	Walter	Chairperson	
Mr.	David	Medalen	Chairperson	
Mr.	John	Weeda	Director	ND Transmission Authority
Mr.	Justin	Kringstad	Director	ND Pipeline Authority

From: WARREN, SAMUELE M CIV USAF AFGSC 5 CES/CENP
To: [Ashley Ross](#)
Cc: [SPECHT, JOEY R GS-12 USAF AFGSC 5 CES/CEMD](#); [LEWIS, DANIEL S GS-12 USAF AFGSC 5 CES/CEMC](#); [JOHNSON, BRUCE A GS-12 USAF AFGSC 5 CES/CENP](#); [ALBRIGHT, TREV A GS-13 USAF AFGSC 5 CES/CEN](#); [LONNING, GARY G GS-13 USAF AFGSC 5 CES/CEM](#)
Subject: Ruso Wind Project
Date: Monday, September 10, 2018 4:15:10 PM

Ms. Ross

I've plotted information that was received and there are some concerns.

First has this project been pushed to the DoD Clearing House <https://www.acq.osd.mil/dodsc/>.

It appears that a couple of the windmills are within the 1200 ft easement the launch facilities. There should be no facilities within these 1200 ft areas.

With so many windmill locations there will be a concern of the HICS cables.

The request needs to go in front of the Installation Encroachment Management Team for their input.

sam

Sam Warren
Community Planner
DSN 483-4894 or Comm. 701-723-4894

From: MUNOS, CY I GS-11 USAF AFGSC 91 MMXS/MMXSFK
To: [Ashley Ross](#)
Subject: Ruso Wind Project
Date: Thursday, September 13, 2018 2:59:59 PM

Ashely,

The Minot AFB has assets in the project area. Our requirements for transmission lines are as followed

- 90 degree crossing of USAF buried cable
- preferred 100ft separation of poles

Could you please send me the proposed route when it becomes available? If you have a shape file, it would be better. Thanks.

Cy Munos
Chief, Cable Affairs
91 MMXS/MMXSFK
Minot AFB, ND
DSN: 453-6053
COMM.: 701-723-6053
CELL: 701-720-8274

From: [JOHNSON, BRUCE A GS-12 USAF AFGSC 5 CES/CENP](#)
To: [Bowker, Alexandria C. \(SPC\)](#); [SPECHT, JOEY R GS-12 USAF AFGSC 5 CES/CEMD](#); [LEWIS, DANIEL S GS-12 USAF AFGSC 5 CES/CEMC](#); [ALBRIGHT, TREV A GS-13 USAF AFGSC 5 CES/CEN](#); [LONNING, GARY G GS-13 USAF AFGSC 5 CES/CEM](#); [PEARSON, RENETTA J GS-14 USAF AFGSC 5 CES/CD](#)
Cc: [Ashley Ross](#); [Mikayla Boche](#); [MUNOS, CY I GS-11 USAF AFGSC 91 MMXS/MMXSFK](#); [MCMAHON, ROXANNE M GS-13 USAF AFGSC 5 BW/JA](#)
Subject: RE: Ruso Wind Project
Date: Thursday, December 20, 2018 4:14:33 PM
Attachments: [image001.gif](#)

Ms. Bowker,

Mr. Cy Munos previously sent you his comments on the planned layout. Only one other comment has been made regarding the layout. All comments are as follows:

- There are 9 collector crossings. We have regulations on collector cable crossings and a few of them will have to be modified to be within our regulations. Some access roads will have to be modified as well.
 - No dirt moved on our cable easement (16.5') without AF personnel on site.
 - Minimum 2' of separation, incased in metallic conduit the width of our cable easement (16.5)'
 - 90 degree crossing is mandatory
 - No cable crossing within 50ft of our buried splices
 - Access roads will cross our cable at a minimum of 45 degrees (90 preferred)
 - Will not allow access road to run in USAF easement
 - We will not allow any ditch cutting for access roads on our easement without approval.
 - We require a 48hr notice prior to cable crossing or any construction on USAF easement. (Cable Affairs Office 701-723-6053)
 - Must maintain a 1200 foot separation from any LF. Restrictive easement.

If you have any further questions, please feel free to contact me.

V/r,
Bruce

Bruce Johnson
Chief, Portfolio Optimization
DSN: 453-4693
Comm: (701) 723-4693

From: Bowker, Alexandria C. (SPC) [mailto:acbowker@southernco.com]
Sent: Tuesday, December 18, 2018 11:16 AM
To: WARREN, SAMUELE M CIV USAF USAFE 48 CES/PMO <samuele.warren.1@us.af.mil>; SPECHT, JOEY R GS-12 USAF AFGSC 5 CES/CEMD <joey.specht@us.af.mil>; LEWIS, DANIEL S GS-12 USAF AFGSC 5 CES/CEMC <daniel.lewis.23@us.af.mil>; JOHNSON, BRUCE A GS-12 USAF AFGSC 5 CES/CENP <bruce.johnson.25@us.af.mil>; ALBRIGHT, TREV A GS-13 USAF AFGSC 5 CES/CEN

<trev.albright@us.af.mil>; LONNING, GARY G GS-13 USAF AFGSC 5 CES/CEM
 <gary.lonning@us.af.mil>; PEARSON, RENETTA J GS-14 USAF AFGSC 5 CES/CD
 <renetta.pearson@us.af.mil>

Cc: Ashley Ross <Ashley.ross@kljeng.com>; Mikayla Boche <Mikayla.Boche@kljeng.com>

Subject: [Non-DoD Source] Ruso Wind Project

All,

Since our last discussion, Southern Power has revised the Ruso Wind Project layout. I have attached the turbine layout, road and collector system, and gen tie route. The project will generate up to 200 megawatts of electricity and will result in up to 66 wind turbines. The current project layout includes up to 53 primary turbine locations and 13 alternate turbine locations. SPC plans to utilize two turbine models, with an output between 2.415 MW – 4.8 MW. The maximum number of Siemens 2.415-108 is 11 and the maximum number of Siemens 4.2-145 is 42. The planned project layout is designed to accommodate both of the turbine models under consideration. The turbine specifications are as follows:

Turbine Type	Rotor Diameter (meters - feet)	Rotor Swept Area (meters ² - feet ²)	Cut-in Wind Speed (m/s)	Rated Power (MW)	Cut-out Wind Speed (m/s)	Blade Length (meters - feet)	Hub Height (meters - feet)	Blade Height (Highest) (meters - feet)	Blade Height (Lowest) (meters - feet)	Max # of Project Turbines
Siemens SWT-2.415-108	108 – 354.3	9,144 – 98,425.2	3.0	2.415	25.0	52.6 – 172.6	80 – 262.5	134 – 439.6	26 – 85.3	11
Siemens SG 4.2-145	145 – 475.7	16,506 – 177,669.1	3.0	4.2	27.0	71 – 232.9	107.5 – 352.7	180 – 590.6	35 – 114.8	42

Please let me know if you need any additional information. We are planning to submit a permit application to the North Dakota Public Service Commission on December 28, 2018 and would appreciate any input before that date.

Thanks,

Alex Bowker

Alex C. Bowker

Siting

Southern Power Company

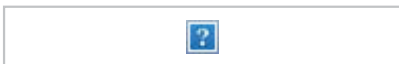
3535 Colonnade Parkway, BIN S-855-EC

Birmingham, AL 35243

O: 205.992.0163

M: 205.915.9519

southernpowercompany.com



From: [JOHNSON, BRUCE A GS-12 USAF AFGSC 5 CES/CENP](#)
To: [Bowker, Alexandria C. \(SPC\)](#); [SPECHT, JOEY R GS-12 USAF AFGSC 5 CES/CEMD](#); [LEWIS, DANIEL S GS-12 USAF AFGSC 5 CES/CEMC](#); [ALBRIGHT, TREV A GS-13 USAF AFGSC 5 CES/CEN](#); [LONNING, GARY G GS-13 USAF AFGSC 5 CES/CEM](#); [PEARSON, RENETTA J GS-14 USAF AFGSC 5 CES/CD](#)
Cc: [Ashley Ross](#); [Mikayla Boche](#); [MUNOS, CY I GS-11 USAF AFGSC 91 MMXS/MMXSFK](#); [MCMAHON, ROXANNE M GS-13 USAF AFGSC 5 BW/JA](#)
Subject: RE: Ruso Wind Project
Date: Thursday, December 20, 2018 4:14:33 PM
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Bruce

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Comm: (701) 723-4693

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<trev.albright@us.af.mil>; LONNING, GARY G GS-13 USAF AFGSC 5 CES/CEM
<gary.lonning@us.af.mil>; PEARSON, RENETTA J GS-14 USAF AFGSC 5 CES/CD
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Cc: Ashley Ross <Ashley.ross@kljeng.com>; Mikayla Boche <Mikayla.Boche@kljeng.com>

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Please let me know if you need any additional information. We are planning to submit a permit application to the North Dakota Public Service Commission on December 28, 2018 and would appreciate any input before that date.

Thanks,

Alex Bowker

Alex C. Bowker

Siting

Southern Power Company

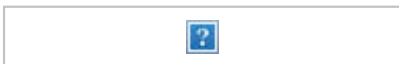
3535 Colonnade Parkway, BIN S-855-EC

Birmingham, AL 35243

O: 205.992.0163

M: 205.915.9519

southernpowercompany.com



Attachment 3

Late-Filed Exhibit No. 51(a), (b), and (e)

Ruso Wind Partners, LLC
Ruso Wind Project and Gen-Tie Line Project
Docket Nos. PU-19-28/PU-19-29

Late-Filed Exhibit No. 51 – Update on Resolution of Potential Concerns Raised by Department of Defense/Minot Air Force Base

At the public hearing, a request was made for updates on the resolution of the potential concerns raised by the Minot Air Force Base in the Department of Defense’s June 6, 2019 letter. As testified to at the public hearing, Ruso Wind Partners, LLC (“Ruso Wind”) had committed to engaging in the formal Mitigation Response Team (MRT) process to coordinate with the Department of Defense and the Minot Air Force Base to reach a resolution. Following the hearing, Ruso Wind participated in the MRT with the Department of Defense and the Minot Air Force Base and, in that process, agreed to remove five turbine locations (T12, T13, T14, T26 and ALT-62) to address Minot Air Force Base’s concerns. The Air Force also cited safety and operational concerns with installation of an aircraft detection lighting system near the existing nuclear facilities, and indicated a standard lighting system should be installed on the Project. A copy of an August 9, 2019 letter from the Office of the Assistant Secretary of Defense and minutes from the MRT meetings are attached as **Late-Filed Exhibit No. 51(a)**.

In lieu of primary turbines T12, T13, T14 and T26, Ruso Wind has activated the following turbines (previously alternates): T48, T51, T53 and T54. An updated version of the Project layout is attached as **Late-Filed Exhibit No. 51(b)**.



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

3500 DEFENSE PENTAGON
WASHINGTON, DC 20301-3500

SUSTAINMENT

AUG 09 2019

Ms. Rachel Garrett
Southern Power
3535 Colonnade Parkway, BIN S-855-EC
Birmingham, AL 35243

Reference: Federal Aviation Administration (FAA) Study Number: 2019-WTW-1173-OE and 60 associated structures

Dear Ms. Garrett,

Thank you for your participation in the Mitigation Response Team (MRT) to assess and overcome military impacts from your proposed Southern Power – Ruso wind farm project in Ruso, North Dakota. In a letter dated June 6, 2019, the Department of Defense (DoD) described the potential impacts to military operations for the project.

As a result of discussions between Southern Power and the U.S. Air Force, the construction of the Ruso wind project, as proposed, will not present an adverse impact to military operations.

We have notified the FAA of our finding. Our response to the FAA included a notification that further expansion beyond the current project area may be problematic. We encourage you to engage DoD prior to any proposed expansion.

If you have any further concerns, please contact Mr. Steven Sample, phone (703) 571-0076, or email steven.j.sample4.civ@mail.mil.

A handwritten signature in blue ink, appearing to read "RE Tickle", is positioned above the typed name.

Ronald E. Tickle
Executive Director
Military Aviation and Installation
Assurance Siting Clearinghouse



Capitol Airspace Group

5400 Shawnee Road, Suite 304
Alexandria, VA 22312

703-256-2485
capitolairspace.com

August 9th, 2019

Elizabeth Wash
Southern Power Company
3535 Colonnade Pkwy, Birmingham, AL 35243

Re: Ruso Wind Project

To whom it may concern:

Capitol Airspace Group, along with partners from Southern Power Company, conducted two mitigation response team (MRT) discussions as organized by the DoD Siting Clearinghouse (Clearinghouse). The two MRTs were conducted on July 17 and July 25, 2019. The DoD Clearinghouse organized the calls and the attendees included Air Force representatives from Global Strike Command, as well as the helicopter and security forces from Minot and F.E. Warren (Wyoming) Air Force Bases (AFB).

During the course of the two MRTs, the discussion focused on the Air Force's concerns for six proposed turbine locations that were in the vicinity of launch facilities controlled by Minot AFB. After the first MRT, and hearing the DoD partner's concerns, Southern Power agreed to remove, and terminate through the FAA, five of these proposed turbine locations. Upon commencing the second MRT discussion, the Air Force agreed with Southern Power's five turbine removal/termination, and found this mitigation to be acceptable. The only additional request from the Air Force, which is standard practice for tall structures in the vicinity of military facilities, was to include Night Vision Goggle (NVG) compatible lighting on the turbines. Southern Power agreed to this additional stipulation. The DoD Clearinghouse released the remainder of the proposed wind turbines to the FAA on August 8th, 2019 and responded with a "No Objection, with Provisions" (the provision being the requirement for NVG compatible lighting).

Additionally, the Air Force, through the 582nd Helicopter Group and 37th Helicopter Squadron Operations Group, has determined that full-time lighting should be required when in proximity to nuclear facilities for safety and operational concerns. This Air Force assessment, based on the Air Force's safety and operational concerns, should result in the FAA requiring installation of standard lighting, rather than an Aircraft Detection Lighting System (ADLS), on the Project.

If you have any questions regarding the results of these discussions, please do not hesitate to contact me directly at (703) 256-2485 or Dan.Underwood@capitolairspace.com.

Sincerely,

Dan Underwood
Project Manager / Military Lead
Capitol Airspace Group

R81W

R82W

Ward County

Brilliant Township

Greely Township

Newman Township

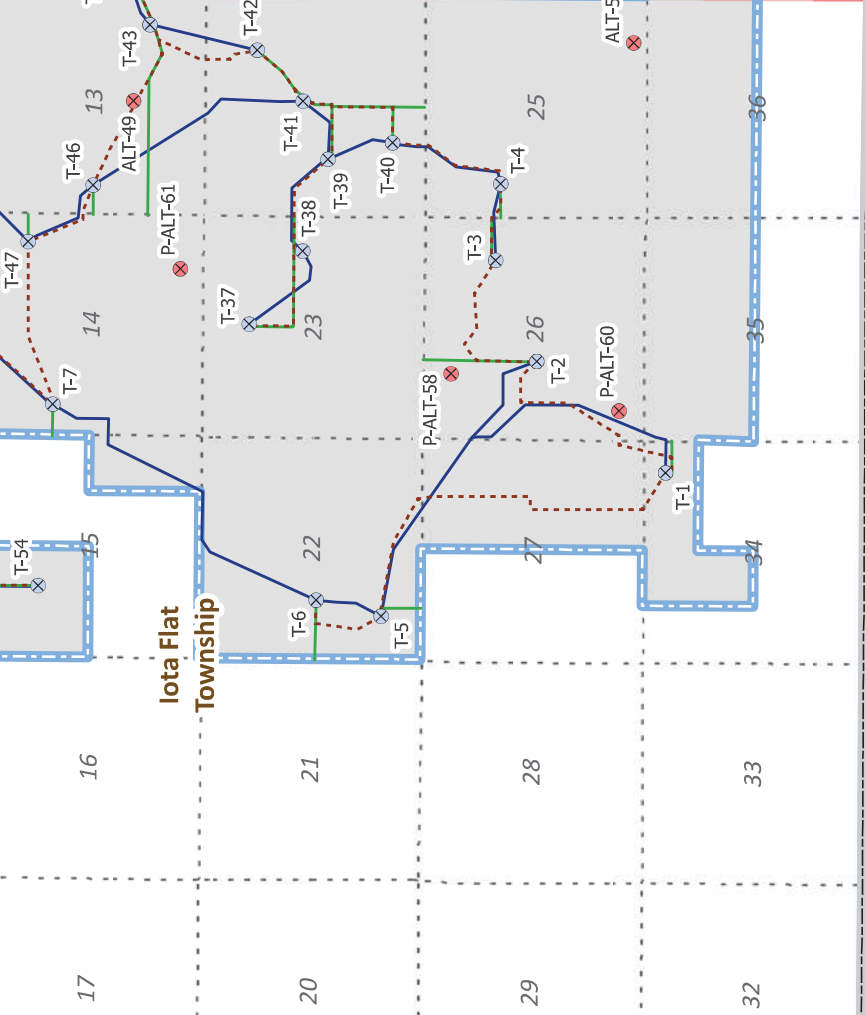
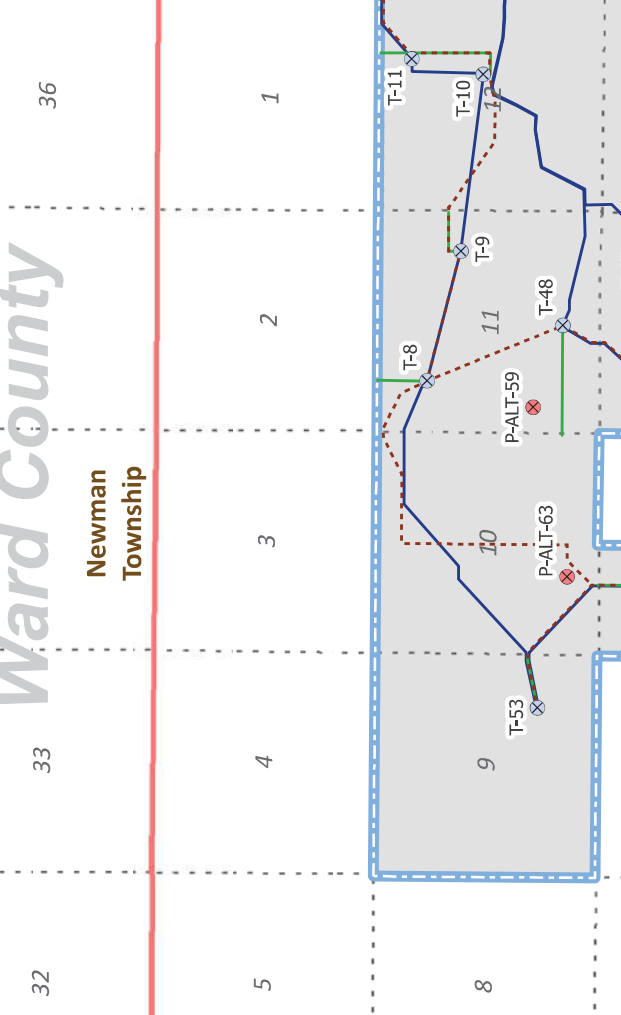
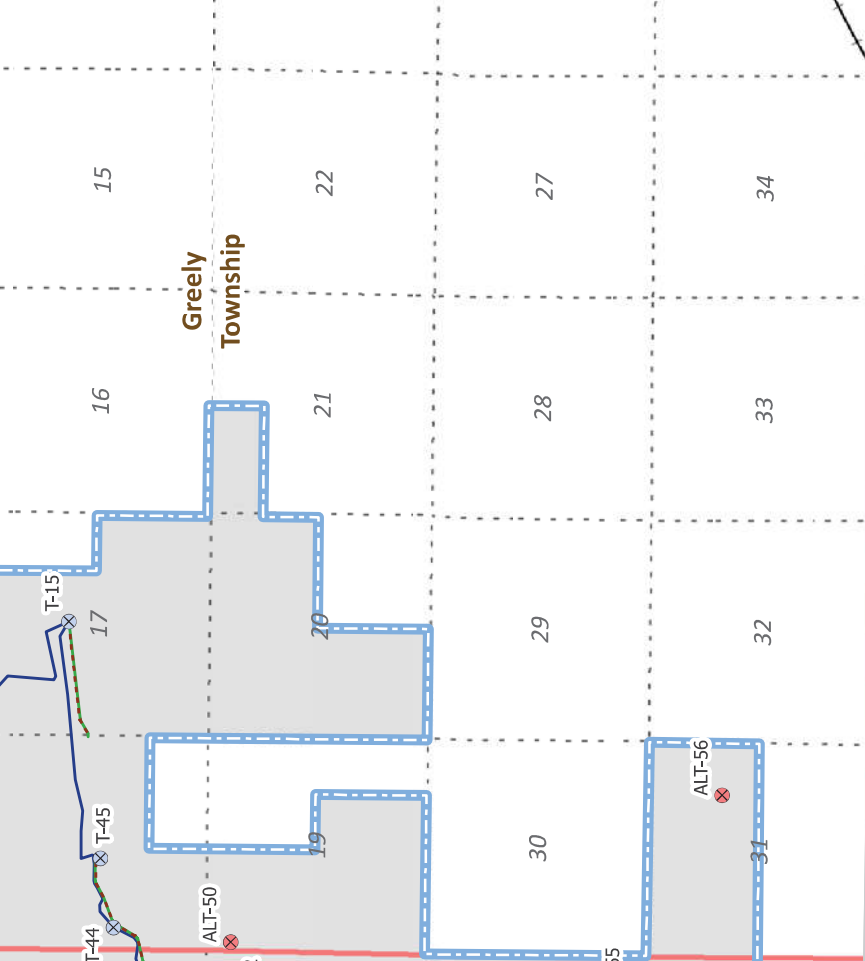
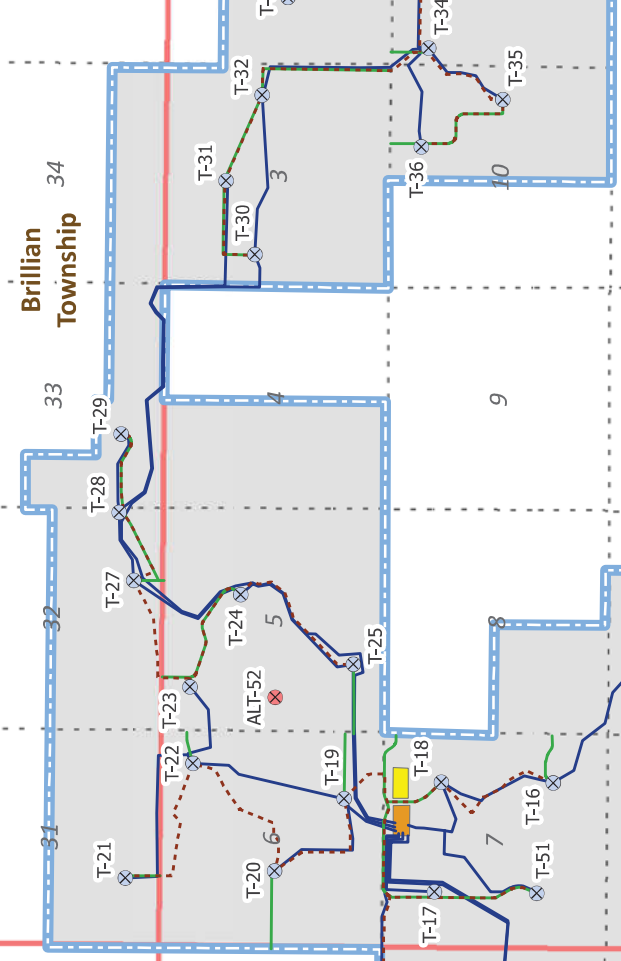
Iota Flat Township

32 33 34

5 8 9 10 11 12 13 14 15 16 17

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34

15 16 21 22 27 28 29 30 31 32 33 34



T152N

T151N

Ruso Wind Partners, LLC
Ruso Wind Project
Docket No. PU-19-28

Supplement to Late-Filed Exhibit No. 51 – Issuance of Determinations of No Hazard

Since filing Late-Filed Exhibit No. 51 regarding interactions with the Department of Defense and the Federal Aviation Administration (“FAA”), Ruso Wind Partners, LLC (“Ruso”) received final Determinations of No Hazard (“DNHs”) from the FAA for its currently proposed turbine array. A copy of one of the DNHs is attached as **Late-Filed Exhibit No. 51(e)**. As noted in the DNH, the DNH was final on December 11, 2019 unless a petition for review was filed with the FAA on or before December 1, 2019. Attached as **Late-Filed Exhibit No. 51(f)** is a copy of e-mail correspondence from the FAA on December 4, 2019 confirming no valid petitions were filed and, thus, the Project’s DNHs are final.

The DNHs also state the Project “would be located within or near a military training area and/or route” that the FAA’s Determinations are conditioned upon use of standard turbine lighting for the Project: “As a condition to this Determination, the structure is to be marked/lighted in accordance with FAA Advisory circular 70/7460-1 L Change 2, Obstruction Marking and Lighting, white paint/synchronized red lights - Chapters 4,12&13(Turbines).” Additionally, the Determinations note that the Department of Defense and the United States Air Force requested that all Project turbines be installed with night vision goggle (“NVG”) compatible lighting due to the Project’s proximity to a military training route or military training area, and Ruso will comply with this request.



Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 10101 Hillwood Parkway
 Fort Worth, TX 76177

Issued Date: 11/01/2019

Rachel Garrett
 Southern Power
 3535 Colonnade Parkway
 BIN S-855-EC
 Birmingham, AL 35243

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Wind Turbine T50
 Location: Ruso, ND
 Latitude: 47-51-49.66N NAD 83
 Longitude: 101-06-15.39W
 Heights: 2119 feet site elevation (SE)
 600 feet above ground level (AGL)
 2719 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the structure would not be a hazard to air navigation provided the following condition(s) is(are) met:

As a condition to this Determination, the structure is to be marked/lighted in accordance with FAA Advisory circular 70/7460-1 L Change 2, Obstruction Marking and Lighting, white paint/synchronized red lights - Chapters 4,12&13(Turbines).

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 60 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

See attachment for additional condition(s) or information.

While the structure does not constitute a hazard to air navigation, it would be located within or near a military training area and/or route.

This determination expires on 05/01/2021 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is subject to review if an interested party files a petition that is received by the FAA on or before December 01, 2019. In the event a petition for review is filed, it must contain a full statement of the basis upon which it is made and be submitted to the Manager of the Airspace Policy Group. Petitions can be submitted via mail to Federal Aviation Administration, 800 Independence Ave, SW, Room 423, Washington, DC 20591, via email at OEPetitions@faa.gov, or via facsimile (202) 267-9328.

This determination becomes final on December 11, 2019 unless a petition is timely filed. In which case, this determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review. For any questions regarding your petition, please contact Airspace Policy Group via telephone – 202-267-8783.

This determination is based, in part, on the foregoing description which includes specific coordinates and heights. This determination is valid for coordinates within one (1) second latitude/longitude and up to the approved AMSL height listed above. If a certified 1A or 2C accuracy survey was required to mitigate an adverse effect, any change in coordinates or increase in height will require a new certified accuracy survey and may require a new aeronautical study.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

Additional wind turbines or met towers proposed in the future may cause a cumulative effect on the national airspace system. All information from submission of Supplemental Notice (7460-2 Part 2) will be considered the final data (including heights) for this structure. Any future construction or alteration, including but not limited to changes in heights, requires separate notice to the FAA.

Obstruction marking and lighting recommendations for wind turbine farms are based on the scheme for the entire project. ANY change to the height, location or number of turbines within this project will require a reanalysis of the marking and lighting recommendation for the entire project. In particular, the removal of previously planned or built turbines/turbine locations from the project will often result in a change in the marking/lighting recommendation for other turbines within the project. It is the proponent's responsibility to contact the FAA to discuss the process for developing a revised obstruction marking and lighting plan should this occur.

In order to ensure proper conspicuity of turbines at night during construction, all turbines should be lit with temporary lighting once they reach a height of 200 feet or greater until such time the permanent lighting configuration is turned on. As the height of the structure continues to increase, the temporary lighting should be relocated to the uppermost part of the structure. The temporary lighting may be turned off for periods when they would interfere with construction personnel. If practical, permanent obstruction lights should be installed and operated at each level as construction progresses. An FAA Type L-810 steady red light fixture shall be used to light the structure during the construction phase. If power is not available, turbines shall be lit with self-contained, solar powered LED steady red light fixture that meets the photometric requirements of an FAA Type L-810 lighting system. The lights should be positioned to ensure that a pilot has an unobstructed view of at least one light at each level. The use of a NOTAM (D) to not light turbines within a project until the entire project has been completed is prohibited.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures. The study disclosed that the described structure would have no substantial adverse effect on air navigation.

An account of the study findings, aeronautical objections received by the FAA during the study (if any), and the basis for the FAA's decision in this matter can be found on the following page(s).

This determination cancels and supersedes prior determinations issued for this structure.

If we can be of further assistance, please contact Lan Norris, at (404) 305-6645, or Lan.norris@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2019-WTE-1222-OE.

Signature Control No: 395837111-421565219

(DNH -WT)

Mike Helvey

Manager, Obstruction Evaluation Group

Attachment(s)

Additional Information

Map(s)

Additional information for ASN 2019-WTE-1222-OE

Abbreviations:

AGL, Above Ground Level
AMSL, Above Mean Sea Level
ARTCC, Air Route Traffic Control Center
ASN, Aeronautical Study Number
CFR, Code of Federal Regulations
MVA, Minimum Vectoring Altitude
NM, Nautical Mile

This notice is for 61 proposed wind turbines as a part of a wind farm project that would be located approximately 17.05 - 24.14 NM northeast of the Airport Reference Point for the Garrison Municipal Airport (D05), Garrison, ND. The ASNs with AGL heights, AMSL heights and coordinates for each turbine are listed on page one. The proposed structures would exceed the obstruction standards of 14 CFR Part 77 as follows:

Section 77.17(a)(1) by 101 feet; a height that exceeds 499 feet AGL.

Section 77.17(a)(3); A height that increases a minimum instrument flight altitude within a terminal area. The following structures would increase the MVA for Minneapolis ARTCC (ZMP), Minneapolis MN; ZMP_TAV_2016, Sector PDVL01 from 3500 feet AMSL to _____ feet AMSL.

- 3500 feet to 3700 feet

2019-WTE-1194-OE
2019-WTE-1199-OE
2019-WTE-1201-OE
2019-WTE-1204-OE
2019-WTE-1205-OE
2019-WTE-1228-OE
2019-WTE-1233-OE
2019-WTE-1238-OE

- 3500 feet to 3800 feet

2019-WTE-1182-OE
2019-WTE-1183-OE
2019-WTE-1184-OE
2019-WTE-1188-OE
2019-WTE-1189-OE
2019-WTE-1190-OE
2019-WTE-1191-OE
2019-WTE-1192-OE
2019-WTE-1193-OE
2019-WTE-1195-OE
2019-WTE-1197-OE
2019-WTE-1198-OE
2019-WTE-1200-OE
2019-WTE-1202-OE
2019-WTE-1203-OE
2019-WTE-1206-OE

2019-WTE-1207-OE
2019-WTE-1208-OE
2019-WTE-1217-OE
2019-WTE-1226-OE
2019-WTE-1227-OE
2019-WTE-1236-OE

In order to facilitate the public comment process, the studies were circularized under ASN 2019-WTE-1173-OE on 09/24/2019, to all known aviation interests and to non-aeronautical interests that may be affected by the proposal. No letters of objection were received as a result of the circularization concluding on 10/31/2019.

The aeronautical study disclosed that the proposed structures would have the adverse effect as described above on instrument flight procedures. MVAs are not circulated for public comment as they are solely used by ATC and not published for public use. The aeronautical study disclosed that increasing the MVA in the area of the turbines would not impact a significant number of operations. The proposed structures would have no other effect on any existing or proposed arrival, departure, or en route IFR operations or procedures.

Study for possible VFR effect disclosed that the proposals would have no effect on existing or proposed VFR arrival or departure operations. The proposals are beyond traffic pattern airspace. Therefore, the proposal would not have an adverse effect on VFR traffic pattern operations at D05 or any other known public use or military airports. At 600 feet AGL, the structures would extend upwards into altitudes commonly used for en route VFR flight, however no information was received to indicate they would be located within any regularly used VFR routes. Therefore, they would not have a substantial adverse effect on en route VFR flight operations.

The proposed structures would be appropriately obstruction marked/lighted to make them more conspicuous to airmen should circumnavigation be necessary.

The cumulative impact of the proposed structures, when combined with other proposed and existing structures, is not considered to be significant. Study did not disclose any significant adverse effect on existing or proposed public-use or military airports or navigational facilities, nor would the proposals affect the capacity of any known existing or planned public-use or military airport.

Therefore, it is determined that the proposed construction would not have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on any air navigation facility and would not be a hazard to air navigation providing the conditions set forth in this determination are met.

Additional conditions:

As a condition of this determination it is required that Notice of Actual Construction or Alteration (7460-2 Part 1) be E-filed at least 60 full days prior to the start of construction so that appropriate action can be taken to amend the effected procedure(s) and/or altitude(s).

NOTE: The Department of Defense and the United States Air Force identified the structures as being located within the confines or near a military training route or military training area. They request that all turbines associated with this project be installed with night vision goggle (NVG) compatible lighting.





December 4, 2020

North Dakota Public Service Commission
12 Floor of the State Capitol
600 East Boulevard Avenue Dept. 408
Bismarck, ND 58505

**Re: Case No. PU-20-422 - Article 69-06 – Energy Conversion Facility Siting Criteria
Submitted via email to: ndpsc@nd.gov**

Dear Chairman Kroshus, Commissioner Fedorchak and Commissioner Christmann:

The American Wind Energy Association¹ (AWEA) and Wind Industry North Dakota² (WIND) appreciate this opportunity to comment on the proposed revisions to North Dakota's Energy Facility Siting Criteria³ to "minimize impacts on intercontinental ballistic missile facilities, launch control facilities and strategic defense operations."⁴ AWEA and WIND thank the Commission for the invitation to participate in a meeting in Bismarck in January 2020 with Commission staff, the 20th Air Force, and the Department of Defense (DOD) Military Aviation and Installation Assurance Siting Clearinghouse (DOD Siting Clearinghouse) to discuss this issue. As noted in that meeting, and explained in more detail below, AWEA and WIND's strong preference is to limit new regulatory burdens by ensuring compatibility between military missions and proposed energy projects via the existing federal review process managed by the DOD Siting Clearinghouse and including the 20th Air Force. That process has ensured that no project to which DOD objected has even been built. Nevertheless, to the extent the Commission moves forward with these draft changes, AWEA and WIND propose limited changes in these comments.

The U.S. wind industry believes that national security is paramount. Fortunately, the growth in wind energy has been and will continue to be consistent with protecting our national security, military operations, training, and readiness given the existing robust federal review process managed by the DOD Siting Clearinghouse.

¹ AWEA is the national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States, including offshore wind. AWEA's more than 1,000 member companies include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, utilities, marketers, customers, and others. For more information, see: www.awea.org.

² Wind Industry of ND (WIND) is a coalition of industry members and supporters that include the American Wind Energy Association, Apex Clean Energy, Capital Power, EDF Renewable Energy, Enel North America Inc., Invenegy, NextEra Energy Resources, and Orsted. For more information visit www.windindustrynd.com.

³ ND PSC proposed revisions to Article 69-06 (Case No. PU-20-422). Published October 21, 2020. Available at: <https://psc.nd.gov/database/documents/20-0422/002-020.pdf>.

⁴ ND PSC Notice of Intent. Published October 21, 2020. Available at: <https://psc.nd.gov/database/documents/20-0422/003-020.pdf>.

The existing DOD Siting Clearinghouse review process for proposed energy projects

The existing federal review process⁵ promotes early dialogue (including through an informal review option) and facilitates discussion between project proponents and DOD interests (individual military services, individual bases, major commands etc.), including on whether options are available to the developer and/or DOD that would resolve preliminary DOD concerns. In the so far rare event when DOD has concerns and mitigation cannot be agreed upon to address those concerns, developers have cancelled development of the projects (in all but one case, even before DOD formally objects).

The benefits of the existing federal review process include:

- DOD reviews encompass detailed technical information unique to each specific base and military service/command (its assets and missions), and the details of a proposed wind farm (turbine layout, number, height, location, topography etc.), with the goal of understanding potential impacts to specific military assets in the area.
 - In general, one-size-fits-all solutions are not appropriate as they may not adequately protect DOD interests and may be unnecessarily restrictive of landowner rights and developer interests. AWEA and WIND discuss this issue with respect to ICBM launch facilities in more detail below.
- If upon preliminary review, DOD finds the potential for adverse impacts on military operations and readiness, DOD issues a notice of presumed risk to the developer and the governor for the state in which the project is located and automatically requests discussions on potential mitigation options.
 - Developers have signed mitigation agreements to address DOD concerns. Developers have addressed DOD concerns by making changes to their proposed projects, including limiting the number of turbines or changing their heights and proposed locations; deploying night-vision compatible lighting; or agreeing to stop (“curtail”) turbines under certain conditions, among other measures.
- If mitigation options cannot be identified or agreed to by DOD, local bases and project developers, and the developer does not voluntarily cancel the project, DOD can formally object to the proposal.
 - No project has ever been built over a DOD objection.

The DOD review process for proposed energy projects has been revised by Congress on several occasions to strengthen DOD, military service, local base and state interests, most recently in the Fiscal Year 2018 National Defense Authorization Act.⁶ Due to specific revisions made in the FY18 NDAA, signed into law by President Trump, the DOD review process is now codified to:

- Require project developers to vet proposals with the military at least one year prior

⁵ Detailed in [10 USC 183a](#) and [32 CFR Part 211](#).

⁶ Section 311 of Public Law 115-91. Available at: <https://www.congress.gov/bill/115th-congress/house-bill/2810/text>

- to expected construction;
- Extend the deadline for preliminary DoD review to 60 days (the FY20 NDAA further extended to 75 days);
 - Explicitly require that local military installations are involved in the evaluation process;
 - Issue a “notice of presumed risk” to the project proponent if the preliminary review identifies the potential for adverse impacts, which triggers discussion on possible mitigation options. Such a notice will also need to be resolved by developers in order to move forward with wind farm construction because of the need to secure financing and insurance for proposed projects;
 - The notice is also provided to states at the same time. DOD must formally solicit comments from states, evaluate and consider those comments when making a final decision, and forward them on to the Federal Aviation Administration for consideration as well;
 - Reinforce that “any adverse impact” on military operations and readiness is the threshold for requiring mitigation discussions with project proponents;
 - Authorize DOD to establish maps of geographic areas in which energy projects could pose a concern;
 - Authorize DOD to evaluate projects proposed in such areas for six months, during which the FAA may not issue its own determination until DOD does so;
 - Require consideration of potential cumulative impacts of multiple wind farms when considering a proposed wind farm;
 - Reinforce DOD’s ability to object to proposed energy projects in cases where they pose an “unacceptable risk to the national security of the United States,” while pulling in the expansive definition from DOD regulations to include significant adverse impacts to training, research, development, testing, and evaluation, military operations or to maintaining military readiness;
 - Require notification of the “appropriate state agency” of a determination of unacceptable risk;
 - Eliminate a provision that set an objective for DOD to support robust deployment of renewable energy; and,
 - Clarify that DOD can request and accept funds from project proponents for mitigation.

One-size-fits-all standoff distances in general are “not useful,” but are ICBM launch facilities different?

The DOD Siting Clearinghouse itself has been critical of one-size-fits-all exclusion zones (i.e. “standoff distances”), writing in its March 2015 report⁷ to Congress, that such exclusion zones are “not useful.” The report elaborates on DOD’s concern, saying “Due to the wide variety of missions and the variability of impacts on different types of obstructions, it is not

⁷ Available at:

<https://www.acq.osd.mil/dodsc/library/CY14%20RTC%20on%20MCE%20BOD%20Final-%20ES%20Clean.pdf>



possible to apply a ‘one-size-fits-all’ standoff distance between DOD military readiness activities and development projects.”

The 20th Air Force and Clearinghouse officials have suggested that the ICBM and launch control facilities may be differently situated with respect to setbacks given the mission is the same wherever they are located when compared to, say, the differing uses of radars, military training routes and/or military base footprints. However, in one of the original meetings AWEA attended with the 20th Air Force that took place in Wyoming, a position paper was presented by the Air Force that suggested turbines between 1.5 nautical miles (nm) and 2 nm represented lower impacts compared to the “high” and “severe” risk designations if built within 1.5 and 0.5 nm, respectively. Given this evolving view, perhaps there could be circumstances in which something less than 2 nm could work (for example, depending on the layout of the other turbines in the wind farm, providing multiple entry/exit points etc.). AWEA and WIND’s view is the DOD Siting Clearinghouse process is the appropriate place to consider whether locating turbines within 2 nm of an ICBM facility may be acceptable in a particular location. The answer to individual developers may be 2 nm is required and here is why, but developers should be able to have that dialogue. In some circumstances, DOD may find that a setback less than 2 nm is acceptable, while in other circumstances something greater than 2 nm may be required. The current case-by-case approach allows DOD and the developer to reach an appropriate resolution for each specific turbine.

AWEA and WIND Comments on Proposed Revisions to North Dakota Energy Facility Siting Criteria Related to Military Compatibility

69-06-01-05. Designated agencies and officers

This section is revised to add the “Military Aviation and Installation Assurance Siting Clearinghouse” and the “20th Airforce 91st Missile Wing” (sic) to the list of designated agencies and officers. However, under the existing rules, listed as number 21 is “United States department of defense” (sic).

AWEA and WIND do not object to the inclusion of the Siting Clearinghouse or the 20th Air Force 91st Missile Wing to the list of designated agencies. However, AWEA and WIND respectfully suggest deletion of the more general United States Department of Defense listing as the Siting Clearinghouse is the designee for the DOD under federal law for facilitating proposed energy project reviews⁸ making the DOD listing duplicative and potentially confusing for the regulated community. For that matter, the Clearinghouse would be seeking feedback from the 20th Air Force 91st Missile Wing for projects in the vicinity of their assets, so it may be sufficient to just list the Clearinghouse in order to avoid requests to include a laundry list of DOD interests specific to North Dakota in the rules.

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

⁸ 10 USC 183(a)(b)



Existing rules, which the Commission does not propose to change, include the following areas as “exclusion zones” (meaning energy projects may not be permitted in these areas) –

- (1) “Areas within one thousand two hundred feet of the geographic center of an Intercontinental ballistic missile (ICBM) launch or launch control facility,” and;
- (2) “Within thirty feet [9.14 meters] on either side of a direct line between an Intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave Interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or below ground Infrastructure.”

AWEA and WIND do not object to the above limitations, but we do note that to our knowledge the GIS coordinates for the ICBM launch or launch control facility locations are not publicly available and the Air Force has not been able/willing to share with developers (this was confirmed at the January meeting in Bismarck). So, there needs to be some clarity provided about how developers are supposed to know if they were considering turbines within these ranges or the new avoidance area range proposed by the Commission and discussed below.

The Commission has proposed to expand “avoidance areas” to include “Areas within 2 nautical miles of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.” As with the other avoidance areas in the existing regulations, proposed energy projects “may not be approved” in this avoidance area “unless the applicant shows that under the circumstances there is no reasonable alternative.” Factors that will be considered include, among others “the proposed management of adverse impacts.” Buffers of a “reasonable width to protect the integrity of the area must be included.”

To the extent the Commission does not just strike this language completely given the existing federal review process, AWEA and WIND strongly prefer, as the Commission has proposed, the inclusion of the 2 nm zone around ICBM launch and launch control facilities as avoidance areas rather than as exclusion areas. The framework set up by the proposed revisions sends the signal to developers that proposing turbines within 2 nm may be difficult to get approved, but, as described earlier in these comments, it appropriately leaves the negotiations over whether an alternative is acceptable up to the developer and the military through the DOD Siting Clearinghouse process.

This framework also provides more protection for private property rights. Were the 2 nm zone to be proposed as an exclusion zone, it would put thousands of acres of private property off-limits to wind energy development even if a developer was able to arrange an alternative approach for a particular project through the DOD Siting Clearinghouse process.

To facilitate industry compliance with some other state siting requirements, the DOD Siting Clearinghouse has begun issuing “mission compatibility” letters when the project is cleared as having no adverse impact to military operations or readiness and/or potential adverse impacts have been resolved to the satisfaction of DOD through mitigation discussions.



AWEA and WIND suggest that if such a letter was obtained via the DOD Siting Clearinghouse process for the siting of a wind turbine or turbines within the 2 nm zone that the letter should satisfy the requirements proposed by the Commission related to alternative considerations, management of adverse impacts and buffers of a reasonable width.

AWEA and WIND also recommend that the Commission clarify the avoidance area designation is only intended to apply to vertical elements of a wind turbine, not to associated surface or subsurface infrastructure like roads, collector lines, and laydown yards as these elements would not interfere with the mission of the 20th Air Force to protect the ICBM facilities. And, the existing DOD review process would ensure compatibility between wind farm surface and subsurface elements and any existing DOD infrastructure like buried cables to ensure the 20th Air Force mission to operate and maintain the ICBM facilities was also protected.

Finally, AWEA and WIND recommend that the Commission clarify that the proposed revisions, particularly the avoidance area designation, does not apply to pending projects with active determinations of no hazard from the FAA.

Conclusion

Thank you for your careful deliberations on this important matter and your consideration of these comments. We stand ready to assist with any additional information you may need. Please do not hesitate to contact us.

Sincerely,

Tom Vinson
VP, Policy & Reg. Affairs
AWEA

Jeff Danielson
Central States Director
AWEA

Chris Kunkle
Senior Manager,
Govt. & Regulatory Affairs
Apex Clean Energy
Chair, WIND



December 4, 2020

North Dakota Public Service Commission
12 Floor of the State Capitol
600 East Boulevard Avenue Dept. 408
Bismarck, ND 58505

Submitted via email to: ndpsc@nd.gov

RE: Case No. PU-20-422 - Article 69-06 – Energy Conversion Facility Siting Criteria

Dear Chairman Kroshus, Commissioner Fedorchak and Commissioner Christmann,

Thank you for the opportunity to comment in this matter and for your thoughtful consideration of all the various factors affecting North Dakota’s energy industry. PRC Wind (“PRC”) is a renewable energy project developer active in the central US since 1997 with total developed generation capacity exceeding 2 gigawatts. PRC continues to actively develop wind generation capacity in North Dakota. PRC has studied the Energy Conversion Facility Siting Criteria docket #20-422, and strongly supports the December 4, 2020 comments submitted by the American Wind Energy Association (“AWEA”) and Wind Industry of North Dakota (“WIND”).

Sincerely,

Paul White
President

18 PU-20-422 Filed 12/04/2020 Pages: 1
Comments on proposed Rules
PRC Wind
Paul White

December 4, 2020

Via Electronic Mail

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

In re: NextEra Energy Resources, LLC
Energy Conversion Facility Siting Criteria
Rulemaking
Case No. PU-20-422
Our File No. 035218-000023

Dear Mr. Kahl:

Enclosed for filing in the above-referenced matter, please find the Comments of NextEra Energy Resources, LLC regarding proposed N.D. Admin. Code § 69-06-08-01(3)(g).

Please feel free to contact me with any questions. Thank you.

Sincerely,



Casey A. Furey

CAF/lh
Enc.

cc: Tracy Davis (via email)

19 PU-20-422 Filed 12/04/2020 Pages: 5
Comments from NextEra Energy Resources, LLC regarding proposed Rules
Crowley Fleck, PLLP
Casey Furey

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

Case No. PU-20-422

NOVEMBER 24, 2020 PUBLIC HEARING

**COMMENTS OF NEXTERA ENERGY RESOURCES, LLC
REGARDING PROPOSED N.D. ADMIN. CODE § 69-06-08-01(3)(g)**

- Good morning, Commissioners. My name is Ryan Pumford, and I am a Director of Development for NextEra Energy Resources, LLC (NextEra). With me is Lt. Gen. (retired) Anthony (Tony) Rock, a 35-year Air Force veteran with command and operational experience, with whom we consult to aid in engaging the right people within the Department of Defense (DOD), and ensuring our projects are compatible with the military mission.
- NextEra is one of the largest wholesale generators of electric power in the United States, with generating facilities in 36 states and Canada at the end of 2019. NextEra subsidiaries own and operate 15 wind projects in North Dakota, and is currently constructing a 16th project that will be in service before the end of 2020.
- In my role as Director of Development for NextEra, I am responsible for overseeing the development of wind projects nationwide, which includes obtaining necessary permits and approvals, such as approvals from the DOD and Federal Aviation Administration (FAA).
- I appreciate the opportunity to speak to you today to provide insights that NextEra has learned from developing its fleet of resources, and from our experience working closely with the DOD and FAA to safely site wind turbines that may be near intercontinental ballistic missile (ICBM) launch facilities or launch control sites.
- At NextEra, which has a 25% veteran workforce, myself included, we understand and respect the critical need for wind developers to coordinate closely with the DOD, FAA, and local military officials to ensure that wind development is compatible with the military's critical mission. Specifically, it was through this early outreach and close coordination that we were able to collaborate with Vance Air Force Base in Oklahoma to reach consensus on a project configuration of our 250 megawatt Skeleton Creek Wind Project. We also worked with F.E. Warren Air Force Base in Wyoming, and the North American Aerospace Defense Command (NORAD) to implement mutually agreeable radar mitigation strategies for projects in Wyoming and Oregon. Additionally, we have

collaborated with the Kansas Air National Guard on a solution to mitigate the impact on one of their Military Training Routes.

- When we begin developing a new wind project, we reach out to any military installation within the vicinity of a proposed project, or who use airspace above a project, to begin informal coordination, and we separately commence informal review of a proposed project by the DOD's Military Aviation and Installation Assurance Siting Clearinghouse (Siting Clearinghouse). The Siting Clearinghouse was established in 2011 to create a collaborative and standardized process to review projects and assure that proposed wind developments are compatible with the military mission. The Siting Clearinghouse is responsible for contacting and coordinating with all military users of affected airspace, including local Air Force bases and ICBM launch or launch control facilities, and issuing an assessment of compatibility on behalf of all DOD users.
- The Siting Clearinghouse Informal Review process engages all users of affected airspace and the developer to review each impact on a case-by-case basis. After our informal meetings, and after making any necessary adjustments to the wind development, we begin a formal review process by the FAA, which reviews proposed turbine locations to issue Determinations of No Hazard (DNH) to ensure that turbines do not significantly impact airspace.
- As part of this formal review process, the FAA sends the application to the Siting Clearinghouse for its review on mission impacts. If individual issues are identified that were not addressed through the Informal Review process, the wind developer works with a Mitigation Response Team – comprised of the developer, the Siting Clearinghouse, and all impacted military units – to try and find a workable solution. If no mitigation is possible, then the Siting Clearinghouse would issue an objection and NextEra would have to abandon the project. If the project is compatible with the military mission, the Siting Clearinghouse clears the project and the FAA issues DNHs. We rely on Siting Clearinghouse approval and DNHs not only to ensure compatibility with the military mission and aviation, but also to finance, insure, and build turbines. To our knowledge, no wind project has ever been built in locations to which the Siting Clearinghouse objected.
- For this reason, based on our experience, if the FAA, Siting Clearinghouse, or other military leaders have concerns about turbine locations, these concerns are specifically addressed informally before requesting permits or through the Siting Clearinghouse process. In our experience, turbines that would interfere with the military's mission are not built.
- This consultation process has been formally implemented and required through federal law and regulations, most recently in the Fiscal Year 2018 National Defense Authorization Act. *See* 10 U.S.C. § 183a; 32 C.F.R. Part 211; Pub. L. 115-91, div. A, title III, § 311, Dec. 12, 2017.

- Therefore, NextEra respectfully submits that adopting a blanket, two nautical mile avoidance area setback as part of the Commission's Siting Criteria is not necessary and would limit wind generation development in the state. Individual impacts are thoroughly assessed and addressed on a case by case basis by the Siting Clearinghouse informal and formal processes, and we do not believe that any further Commission rule changes are necessary.
- If the Commission does wish to modify its rules to include this two nautical mile setback as an avoidance area, we would respectfully suggest that it include language that waive the avoidance area if an applicant shows that it has received DNHs for its proposed wind turbines from the FAA or has obtained a Mission Compatibility Letter from the DOD. This will allow the Commission to ensure that the military's concerns are addressed without creating a blanket prohibition. *See Attachment A.*
- NextEra is also concerned that, as currently drafted, the proposed rule could limit the construction of non-turbine infrastructure (such as underground collection facilities, access roads, or construction laydown yards) within this two nautical mile setback area.
- To address this concern, we would respectfully suggest that the Commission modify any language it adopts to make clear that any avoidance area applies only to vertical turbines, and does not limit the construction of other, non-turbine infrastructure, such as collection lines, access roads, and laydown yards. *See Attachment A.*
- We are committed to working with the military to properly site wind projects that balance property owners' rights with preservation of national defense and the security of our nuclear weapons. Thank you for the opportunity to speak to you today. Lt. Gen. Rock and I are happy to answer any questions you may have.

ATTACHMENT A

**North Dakota Public Service Commission
Proposed N.D. Admin. Code § 69-06-08-01(3)(g)**

g. Areas within 2 nautical miles of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.

**NextEra Energy Resources, LLC
Proposed Revisions to Proposed N.D. Admin. Code § 69-06-08-01(3)(g)**

g. Areas Wind turbine sites within 2 nautical miles of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility. This restriction does not apply to other non-turbine surface infrastructure, belowground infrastructure, or to wind turbine sites for which the Federal Aviation Administration has issued a Determination of No Hazard or the Department of Defense has issued a Mission Compatibility Letter.

Email: ndpsc@nd.gov

Mailing Address:

North Dakota Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505

November 30, 2020

Re: Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking
Case No. PU-20-422

RECEIVED
DEC - 4 2020

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dear Commissioners:

We are participating landowners in the Ruso Wind Project in Ward County, North Dakota. We understand the Commission has proposed a change to its siting rules that could negatively affect the project and are providing these comments regarding the proposed rule change.

The project has been under development since 2016, and we understand it has conducted extensive site analysis and has nearly completed the Commission's permitting process. We also understand the project coordinated with the Minot Air Force Base and the Department of Defense to avoid impacts to the military's operations. At this point, the project is nearing the finish line – something we have been looking forward to for a while.

If the proposed change making the area within two nautical miles of an intercontinental ballistic missile (ICBM) launch or launch control an "avoidance area" is adopted and applied to the project, we understand that further analysis and project adjustments would be needed to comply. Given all the work that has been done to date to complete the Commission's permitting process, it seems the rules shouldn't change so late in the process. Also, given the sign-off that has already received from the Minot Air Force Base and the Department of Defense on the project, it also doesn't seem necessary to apply such setbacks to the project.

We also ask the Commission to consider the impact the proposed rule change would have on North Dakota landowners' rights to use and develop their land. The proposed rule change would potentially preclude landowners within a 16.5 square mile area around a single ICBM launch or launch control facility from using their land for wind development. We also

understand that there are a significant number of ICBM facilities in North Dakota, so a significant number of acres and landowners would be affected by this rule. The developers of the Ruso Wind Project informed us about the proposed rule change because of the potential effect on the project, but a lot of affected landowners likely aren't aware of the proposed rule change or its potential impact.

As participating landowners, we see the benefits of the Ruso Wind Project for ourselves, our county, and our state. The project will provide a steady income source, a new tax source, and job opportunities within our community. We also believe that the developers of the project have responsibly sited the project to meet the Commission's rules and has done so in coordination with the Minot Air Force Base and the Department of Defense. For these reasons, we encourage the Commission to consider the impact of the proposed rule change on the Ruso Wind Project.

Sincerely,

Waynard A. Kowlesky
222 28th Ave. S.E.
Minot, N.D. 58701

Dec. 2, 2020

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Common Pipeline Carriers
Rulemaking**

Case No. PU-20-398

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

Case No. PU-20-422

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

June 9, 2021

Appearances

Commissioners Julie Fedorchak, Brian Kroshus, and Randy Christmann.

Preliminary Statement

On October 21, 2020, the North Dakota Public Service Commission (Commission) issued a formal Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing and an Abbreviated Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing, proposing to create a new Chapter 69-09-11 and proposing to amend Article 69-06 of the North Dakota Administrative Code.

On October 22, 2020, Commission Staff (Staff) filed statements regarding the required regulatory analysis, small entity analysis, and takings assessments for the captioned cases.

Also on October 22, 2020, the Commission forwarded the notices to the North Dakota Newspaper Association for publication at least 30 days in advance of the hearing and a copy of the Notices and proposed Rules were sent to the Legislative Council.

The Abbreviated Notice was published in each of the 51 official county newspapers in the state during the weeks of October 28 through November 3, 2020.

On November 24, 2020, the Commission held the public hearing as noticed, beginning at 10:00 a.m. in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed a comment period until December 4, 2020, during which the Commission received and considered data, views, or written and oral comments concerning the proposed rulemaking as part of the rulemaking record.

The proposed rules and amendments are summarized as follows:

Case No. PU-20-398 - proposed New Chapter 69-09-11 - Common Pipeline Carriers

The purpose of the proposed new chapter 69-09-11 is to clarify the manner in which common pipeline carriers maintain and file their tariffs pursuant to N.D.C.C. § 49-19-17. The proposed chapter is not expected to have an impact on the regulated community in excess of \$50,000.

Case No. PU-20-422 – Article 69-06 - Energy Conversion Facility Siting Criteria

The purpose of the proposed amendments to article 69-06 is to minimize impacts on intercontinental ballistic missile (ICBM) facilities, launch control facilities, and strategic defense operations. The proposed amendments also update noticed agencies, filing requirements, administration of siting fees, corridor width requirements, and clarify that an owner may waive areas within 500 ft of a residence, school, or place of business as an avoidance area. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

Public Hearing and Comments

The Commission reviewed and considered all comments. The written and oral comments that were received are summarized and discussed below by case number.

Case No. PU-20-398 - proposed New Chapter 69-09-11 - Common Pipeline Carriers

The Commission proposed changes to N.D. Admin. Code Ch. 69-09-11, adding a new section. The new section adds clarification to the tariff requirements of common pipeline carriers. N.D. Admin. Code § 69-09-11-01 will still require common pipeline carriers to make and publish tariffs but clarifies that common pipeline carriers will not be required to file those tariffs except upon request by the commission.

Patrick Fahn, director of the public utilities division, testified on behalf of Staff to the effect of this change. No other comment were made orally at the hearing or received in writing.

The Commission adopts N.D. Admin. Code § 69-09-11-01 as proposed.

Case No. PU-20-422 – Article 69-06 - Energy Conversion Facility Siting Criteria

The Commission proposed amendments to N.D. Admin. Code Ch. 69-06 corrected a statutory reference from the splitting of chapter 49-22 into two chapters, 49-22 and 49-

22.1, provided additional designated agencies that receive notice and updated names of agencies with titles that changed, changed administration of siting fees and refunds, eliminated physical copies required to be filed with the commission, changed GIS information to be filed, eliminated corridor width requirements, added a two nautical mile setback for wind turbines from ICBM launch sites and launch control facilities, and provided for a waiver of the avoidance areas within five hundred feet from a residence, school, or place of business.

The written and oral comments of Patrick Fahn, on behalf of Staff, were received at the hearing. During the hearing, oral and written comments were submitted by Ryan Pumford and retired Lt. General Anthony Rock of NextEra Energy.

Written Comments were submitted by: NextEra Energy, Wind Industry Of North Dakota (WIND), American Wind Energy Association (AWEA), ALLETE Clean Energy (ACE), PRC Wind (PRC), National Grid Renewables (NRG), Maynard Houlesby, Gene and Joyce Schoenberg, and 17 additional participating land owners in the Ruso Wind Project.

These comments are addressed by each section.

69-06-01-05 – Designated agencies and officers

The proposed changes to section 69-06-01-05, designated agencies and officers, ensure that the proper and necessary military stakeholders are notified and able to participate in the siting of a project that may impact their interests, adds additional agencies, and corrects some agency names that have changed.

WIND and AWEA commented and do not object to the addition of “Military Aviation and Installation Assurance Siting Clearinghouse” and “20th Airforce 91st Missile Wing”. WIND and AWEA recommended that the Commission remove “United States Department of Defense”, as the Clearinghouse is the more specific designation under the Department of Defense. PRC supported these comments.

The Commission agrees that the addition of “Military Aviation and Installation Assurance Siting Clearinghouse”, and “20th Airforce 91st Missile Wing” will ensure that the appropriate agencies are notified and allowed to contribute to the siting process and that their mission directives are able to continue in a safe and efficient manner. After discussion, the Commission also added the Grand Forks Air Force Base to ensure that the local command is notified as well.

The Commission considered the recommendation to eliminate the Department of Defense (DOD). The purpose of the amendments to 69-06-01-05 is to increase siting notification to agencies that may be impacted. Within the DOD, there are multiple tiers of authority and interests. The expansion to designations and tiers within the DOD, in

addition to the DOD itself, increases the likelihood that the various tiers and interests within the Department of Defense are notified about potential impacts. To ensure comprehensive stakeholder notification 69-06-01-05, notification to the DOD will remain at this time.

Consistent with the discussion and stated purpose, the Commission revises proposed N.D. Admin. Code. § 69-06-01-05 to add the Grand Forks Air Force Base to the list of designated agencies and officers.

69-06-01-06 – Siting fee refund

No comments were received. Amendments to N.D. Admin. Code § 69-06-01-06 are adopted as proposed.

69-06-02-02 – Filing

No comments were received. Amendments to N.D. Admin. Code. § 69-06-02-02 are adopted as proposed.

69-06-04-01 – Application and 69-06-05-01 - Application

No comments were received regarding the proposed amendments to these sections. The proposed amendments provided that an applicant shall provide paper copies upon Commission request. Upon further discussion, the Commission decided to instead reduce the number of copies received from 10 to 4 to ensure that there are physical copies available while further reducing the amount of paper retained by the Commission.

Consistent with the discussion, the Commission revises proposed N.D. Admin. Code. §§ 69-06-04-01 and 69-06-05-01.

69-06-05-02 – Designation of Corridor Route

No comments were received. Amendments to N.D. Admin. Code § 69-06-05-02 are adopted as proposed.

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

Staff testified in support of the proposed change to add areas within two nautical miles of the geographic center of an ICBM launch or launch control facility as an avoidance area under the Commission's energy conversion facility siting criteria.

NextEra provided oral and written testimony. NextEra stated that the setback is unnecessary and the Siting Clearinghouse process is sufficient to address any concerns.

Additionally, NextEra requested that, if a two nautical mile avoidance area is adopted, to include a waiver of the avoidance area if a letter is obtained from the Department of Defense in agreement with the facility placement. NextEra expressed concerns that as drafted it would exclude any non-vertical infrastructure from being built and provided some proposed language that it felt would remedy the exclusion.

WIND, AWEA, and PRC provided similar comments to NextEra's supporting the adequacy of the Siting Clearinghouse process, the preference of an avoidance area as opposed to an exclusion area if the Commission moves forward with the proposed rules, permission from the DOD as a waiver from the two nautical mile avoidance area, and the avoidance area be clarified as applying to vertical structures only.

Russo Wind Partners, LLC and ALLETE Clean energy recommended that the Commission not adopt the proposed amendment to 69-06-08-01(3), that a decision be postponed to allow a broader group of stakeholders to provide further input, and that if the proposed changes are adopted that pending applications would not be subject to the amendments to avoidance areas.

NRG provided comments regarding the difficulty of not having access to the GIS data or locational data of ICBM missile sites or Launch Control Facilities and that consultation occurs by providing proposed facilities to the Air Force to identify potential issues in relation to military assets. NRG asks the Commission to request that the Air Force make maps and other information regarding the location of ICBM launch and launch control facilities available to developers. NRG also commented that the proposed rules would apply to all energy conversion facilities, and with no concerns being expressed towards other facility siting, that this be limited in its application to wind.

17 Participating landowners in the Russo project signed onto a form letter expressing concerns with the size of the avoidance area and the impact on landowner rights to develop their land.

In Case No. PU-19-290, members of the DOD recommended that wind turbine setbacks be two nautical miles from the center of a launch control facility to avoid interference with operations, and that the developers be required to provide early notification to allow identification of any potential adverse impact to missile field operations. The Commission engaged in this subsequent rulemaking to provide further opportunity for engagement in these issues.

N.D. Admin. Code § 69-06-08-01 provides criteria, exclusion, and avoidance areas to guide and govern the site suitability process. Exclusion areas must be excluded from the sited area, and avoidance areas cannot be developed unless an applicant effectively demonstrates that there is no reasonable alternative location. An applicant must demonstrate that the effects of the location, construction, and operation of the facilities on the selection criteria will be at an acceptable minimum.

Having received further comments and considered the purpose of the proposed rulemaking, the Commission believes it is able to accomplish the concerns expressed with less restrictive measures than was set forth in the proposed rules. The Commission revises the proposed rules to add “military installations, assets, and operations” as a selection criteria instead of requiring developers to avoid the development of these areas. As a selection criteria, an applicant will be required to demonstrate that effects to military operations will be kept at an acceptable minimum and as a selection criteria, additional scrutiny is provided. This, along with the proposed addition of the local military installations, the Military Aviation and Installation Assurance Siting Clearinghouse, and continued notification of the DOD should provide ample opportunity to advise the Commission to ensure acceptable impacts while maintaining development opportunities for landowners.

The flexibility provided by this revision should inherently resolve the concerns related to vertical infrastructure, the necessity of avoidance waivers, limiting its application to wind development, and the necessity of an exemption for projects currently engaged in the siting process. Regarding the comment suggesting that the Commission request that the Air Force provide GIS and locational data to wind developers, the Air Force is best suited to determine the appropriate level of information to provide regarding national defense facilities. To the extent that development of a project requires consultation with the Air Force to identify impacts to military assets, a developer is not only encouraged, but expected, to consult with the Air Force.

Upon reviewing the comments and concerns related to N.D. Admin. Code § 68-06-08-01, the Commission has revised the proposed amendment to modify the two nautical mile ICBM avoidance area to instead be a selection criteria for consideration.

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

No comments were received. Amendments to N.D. Admin. Code. § 69-06-08-02 are adopted as proposed.

Discussion

Having reviewed the proposed rules, and considered the testimony and comments received, the Commission finds good cause for submitting the proposed rule in Case No. PU-20-398 and the proposed rules in Case No. PU-20-422 as revised after comment, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

ORDER

The Commission orders that the proposed rules and amendments in Case No. PU-20-398, attached and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.

The Commission orders that the proposed rules and amendments in Case No. PU-20-422, attached to and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.



Randy Christmann
Commissioner

PUBLIC SERVICE COMMISSION



Julie Fedorchak
Chair



Brian Kroshus
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Common Pipeline Carriers
Rulemaking

Case No. PU-20-398

CHAPTER 69-09-11
Common Pipeline Carriers

69-09-11-01 Pipeline Carrier Tariffs.

A common pipeline carrier shall maintain its tariffs and have them available for production upon commission request.

History: Effective _____, 2020.

General Authority: NDCC 28-32-02, NDCC 49-19-17

Law Implemented: NDCC 49-19-17

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Energy Conversion Facility Siting Criteria
Rulemaking

Case No. PU-20-422

ARTICLE 69-06
ENERGY CONVERSION AND TRANSMISSION FACILITY SITING

Chapter	
69-06-01	General Provisions
69-06-02	Utility Reporting Requirements
69-06-02.1	Request for Jurisdictional Determination
69-06-03	Letter of Intent [Repealed]
69-06-04	Certificate of Site Compatibility
69-06-05	Transmission Facility Permit
69-06-06	Waiver of Procedures and Time Schedules
69-06-07	Emergency Certificate or Permit [Repealed]
69-06-08	Criteria
69-06-09	Continuing Suitability of Certificate or Permit
69-06-10	Small Wind Energy Conversion Facilities
69-06-11	Wind Energy Conversion Facility Lighting Systems

CHAPTER 69-06-01
GENERAL PROVISIONS

Section	
69-06-01-01	Definitions
69-06-01-02	Procedure for Public Hearings
69-06-01-03	Advisory Committees
69-06-01-04	Application
69-06-01-05	Designated Agencies and Officers
69-06-01-06	Siting Fee Refund

69-06-01-01. Definitions.

The terms used throughout this article have the same meanings as in North Dakota Century Code chapter 49-22, and in addition:

1. "Act" means the North Dakota Energy Conversion and Transmission Facility Siting Act, North Dakota Century Code chapter 49-22.
2. "Avoidance criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes unless it is shown that under the circumstances there are no reasonable

alternatives.

3. "Criteria" means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.
4. "Designated corridor" means a corridor for which a certificate has been issued by the commission.
5. "Designated route" means a route for which a permit has been issued by the commission.
6. "Designated site" means a site for which a certificate has been issued by the commission.
7. "Extractive resources" means natural resources that are removed during the construction of a facility, including sand, gravel, soil, rock, and other similar materials.
8. "Exclusion criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes.
9. "Height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.
10. "Historical resource" means a district, site, building, structure, or other object which possesses significance in history, archaeology, paleontology, or architecture, or has other cultural value to the state or local community.
11. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.
12. "Policy criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility.
13. "Refinement" means the action or process of purifying.
14. "Selection criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.

15. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22 and 49-22.1.
16. "Wetland" means an aquatic area important to the life stages of certain wildlife species as defined by the United States fish and wildlife service.

History: Amended effective August 1, 1979; April 1, 2013; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-01, 49-22-03, 49-22-05.1, 49-22-07, 49-22-08, 49-22-08.1, 49-22-19

69-06-01-05. Designated agencies and officers.

The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. ~~State department~~ Department of health.
5. Department of human services.
6. ~~Labor department~~ Department of Labor and human rights.
7. Department of career and technical education.
8. Department of commerce.
9. Energy ~~development~~ infrastructure and impact office.
10. Game and fish department.
11. Industrial commission.
12. ~~Governor~~ Office of the Governor.
13. Department of transportation.
14. State historical society of North Dakota.

15. Indian affairs commission.
16. Job service North Dakota.
17. Department of trust lands.
18. Parks and recreation department.
19. Soil-Natural resources conservation committee-service.
20. State water commission.
21. United States department of defense.
22. United States fish and wildlife service.
23. United States army corps of engineers.
24. Federal aviation administration.
25. The county commission of the county of counties where the project is located.
26. North Dakota transmission authority.
27. North Dakota pipeline authority.
28. North Dakota department of environmental quality.
29. North Dakota geological survey.
30. North Dakota forest service.
31. Federal bureau of land management.
32. Military Aviation and Installation Assurance Siting Clearinghouse.
33. 20th Airforce 91st Missile Wing.
34. Minot Air Force Base
35. Grand Forks Air Force Base

History: Effective August 1, 1979; amended effective July 1, 2008; April 1, 2013;_____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-06. Siting fee refund.

After all siting permits and certificates are issued by the commission and after all siting process and project inspection expenses are paid, ~~notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except five thousand dollars or the amount of the fee remaining if that amount is less than five thousand dollars. When construction and all postconstruction inspections are complete and when the commission has determined that any required tree mitigation is satisfactory, any remaining balance of the application fee will be refunded to the applicant. No refunds for less than fifty dollars will be processed.~~

History: Effective July 1, 2008;_____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-22

69-06-02-02. Filing.

1. ~~Ten copies of each~~ A ten year plan must be filed with the commission, and one copy of each plan must be filed with the county auditor of each county in which any part of a site or corridor is proposed to be located.
2. Notice of the filing of each plan must be given by the utility to each agency and officer entitled to notice as designated in section 69-06-01-05.

History: Amended effective August 1, 1979; April 1, 2013;_____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-04

**CHAPTER 69-06-04
CERTIFICATE OF SITE COMPATIBILITY**

Section	
69-06-04-01	Application
69-06-04-02	Designation of Sites

69-06-04-01. Application.

1. **Form.** An application must be reproduced and bound to eight and one-half-inch by eleven-inch size. Accompanying maps must be folded to eight and one-half inches by eleven inches with the title block appearing in the lower right-hand corner.
2. **Contents.** The application must contain:
 - a. A description of:

- (1) The type of energy conversion facility proposed;
 - (2) The gross design capacity;
 - (3) The net design capacity;
 - (4) The estimated thermal efficiency of the energy conversion process and the assumptions upon which the estimate is based;
 - (5) The number of acres that the proposed facility will occupy; and
 - (6) The anticipated time schedule for:
 - (a) Obtaining the certificate of site compatibility;
 - (b) Completing land acquisition;
 - (c) Starting construction;
 - (d) Completing construction;
 - (e) Testing operations;
 - (f) Commencing commercial production; and
 - (g) Beginning any expansions or additions.
- b. Copies of any evaluative studies or assessments of the environmental impact of the proposed facility submitted to any federal, regional, state, or local agency.
 - c. An analysis of the need for the proposed facility based on present and projected demand for the product or products to be produced by the proposed facility, including the most recent system studies supporting the analysis of the need.
 - d. A description of any feasible alternative methods of serving the need.
 - e. A study area that includes the proposed facility site, of sufficient size to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.
 - f. A discussion of the utility's policies and commitments to limit the environmental impact of its facilities, including copies of board

resolutions and management directives.

- g. A map identifying the criteria that provides the basis for the specific location of the proposed facility within the study area.
- h. A discussion of the criteria evaluated within the study area, including exclusion areas, avoidance areas, selection criteria, policy criteria, design and construction limitations, and economic considerations.
- i. A discussion of the mitigative measures that the applicant will take to minimize adverse impacts which result from the location, construction, and operation of the proposed facility.
- j. The qualifications of each person involved in the facility site location study.
- k. A map of the study area showing the location of the proposed facility and the criteria evaluated.
- l. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the site area.
- m. A discussion of present and future natural resource development in the area.
- n. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission. The information must provide the location of the proposed facilities, the proposed site, and the criteria evaluated.

Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GID/Cad files, the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of the imagery, color bands, i.e., black and white, color, color

infrared, and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83), UTM zone 13N or 14N meters (NAD 83), or geographic coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon commission approval.

3. **Filing.** The applicant shall file an original and ~~ten~~ four copies of an application with the commission. The applicant shall provide additional paper copies upon commission request.
4. **Notice of filing.** The commission shall serve a notice of filing of a complete application on the following:
 - a. The chairman of the board of county commissioners and the auditor of each county in which any part of the site is proposed to be located.
 - b. The chief executive officer of each city in a county in which any part of an energy conversion facility is proposed to be located.
 - c. The chief executive officer of each city within a proposed site for a transmission facility.
 - d. The agencies and officers entitled to notice as designated in section 69-06-01-05.
 - e. The state senators and representatives of each legislative district in which any part of the site is proposed to be located.
5. **Amendment of application.** The commission may allow an applicant to amend its application, consistent with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code article 69-02, at any time during the pendency of an application. A rehearing may be required if the commission determines that a

proposed amendment, which is received after the hearing process has been completed, materially changes the authority sought.

6. **Reapplication.** When a certificate is denied and the commission specifies a modification that would make it acceptable, the applicant may reapply. In a reapplication:
 - a. The reapplication must be heard as specified in section 69-06-01-02.
 - b. The utility shall indicate its acceptance or rejection of the suggested modification.
 - c. If a suggested modification is rejected by the applicant, it shall propose an alternative modification.
 - d. Include a filing fee and any additional fees as specified in North Dakota Century Code chapter 49-22.
 - e. Reapplication must be made within six months of the order denying an application.

History: Amended effective August 1, 1979; April 1, 2013;_____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

CHAPTER 69-06-05 TRANSMISSION FACILITY PERMIT

Section	
69-06-05-01	Application
69-06-05-02	Designation of Corridor and Route

69-06-05-01. Application.

1. **Form.** An application must be reproduced and bound to eight and one-half-inch by eleven-inch size. Accompanying maps must be folded to eight and one-half inches by eleven inches with the title block appearing in the lower right-hand corner.
2. **Contents.** The application must contain:
 - a. A description of the following:
 - (1) The type of facility proposed.

- (2) The purpose of the facility.
- (3) The technology to be deployed.
- (4) The type of product to be transmitted.
- (5) The source of the product to be transmitted.
- (6) The final destination of the product to be transmitted.
- (7) The proposed size and design and any alternate size or design that was considered, including:
 - (a) The width of right of way;
 - (b) The approximate length of facility;
 - (c) The estimated span length for electric facilities;
 - (d) The anticipated type of structure for electric facilities;
 - (e) The voltage for electric facilities;
 - (f) The requirement for and general location of any new associated facilities;
 - (g) The estimated distance between surface structures for pipeline facilities;
 - (h) The pipe size for pipeline facilities;
 - (i) The maximum design operating pressure and temperature for pipeline facilities;
 - (j) The maximum design flow rate for pipeline facilities; and
 - (k) The number and general location of compressor or pumping stations.

b. The anticipated time schedule for accomplishing major events, including:

- (1) Obtaining the certification of corridor compatibility;
- (2) Obtaining the route permit;

- (3) Completing right-of-way acquisition;
 - (4) Starting construction;
 - (5) Completing construction;
 - (6) Testing operations; and
 - (7) Commencing operations.
- c. A copy of each evaluative study or assessment of the environmental impact of the proposed facility submitted to the agencies listed in section 69-06-01-05 and each response received.
 - d. An analysis of the need for the proposed facility based on present and projected demand for the product transmitted, including the most recent system studies supporting the analysis of the need.
 - e. A description of any feasible alternative methods for serving the need
 - f. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless another appropriate width is determined by the commission.
 - g. A study area that includes a proposed corridor of sufficient width to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.
 - h. A discussion of the factors in North Dakota Century Code section 49-22-09 to aid the commission's evaluation of the proposed route.
 - i. A discussion of the applicant's policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.
 - j. Identification and map of the criteria that led to the proposed route location within the designated corridor, including exclusion areas, avoidance areas, selection criteria, policy criteria, design construction limitations, and economic considerations.
 - k. A discussion of the relative value of each criteria and how the applicant selected the proposed corridor location, giving consideration to all criteria and how the location, construction, and operation of the facility will affect each criteria.

- l. A discussion of the general mitigative measures that the applicant will take to minimize adverse impacts that result from a route location in the proposed corridor and the construction and operation of the facility.
- m. The qualifications of each person involved in the corridor location study.
- n. A map identifying the criteria that led to the proposed route location within the designated corridor and the location of any new associated facilities. Several different criteria may be shown on each map depending on the map scale and the density and nature of the criteria.
- o. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the site area.
- p. A discussion of present and future natural resource development in the area.
- q. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission. The information must provide the location of the proposed facilities, the proposed corridor and route, and the criteria evaluated. Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GIS/Cad files the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of imagery, color bands, i.e., black and white, color, color infrared, and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83). UTM zone 13N or 14N meters (NAD 83), or geographic

coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon commission approval.

3. **Filing.** The applicant shall file an original and ~~ten~~ four copies of an application with the commission. The applicant shall provide additional paper copies upon commission request.
4. **Service.** The applicant shall serve one copy of a complete application on the county auditor in each county in which any part of the designated corridor is located.
5. **Notice of filing.** The commission shall serve a notice of the filing of a complete application on the following:
 - a. The chief executive officer of each city within the designated corridor.
 - b. The agencies and officers entitled to notice as designated in section 69-06-01-05.
 - c. The chairman of the board of county commissioners of each county in which any part of the designated corridor is located.
 - d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.

History: Amended effective August 1, 1979; April 1, 2013; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

69-06-05-02. Designation of corridor and route.

1. **Issuance of a permit.** An order approving the issuance of a permit must:
 - a. Describe the authority granted.
 - b. Contain any special conditions that the commission may require.

- c. Specify any required modifications in the type, design, routing, right-of-way preparation, or construction of the facility.
 - d. Contain findings that the application, with modifications, if any, meets the corridor evaluation process requirements of the Act, and any special conditions the commission may require.
2. **Issuance of a certificate.** When a corridor is approved, the commission shall issue a certificate in accordance with the order.
 3. **Deviations.** The commission may permit a deviation from the designated route before or during construction if the deviation does not violate any of the exclusion and avoidance area criteria of this article. After construction is complete a deviation is governed by North Dakota Century Code section 49-22-03.
 4. **Variance from permit conditions.** The commission may allow a variance from any special condition upon a request demonstrating the existence of good cause.
 5. ~~**Corridor width.** The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless otherwise determined by the commission.~~

History: Amended effective August 1, 1979; April 1, 2013; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

CHAPTER 69-06-08 CRITERIA

Section

69-06-08-01	Energy Conversion Facility Siting Criteria
69-06-08-02	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. 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 [9.14 meters] on either side of a direct line between an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.

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 railroad right of way;

- (4) One and one-tenth times the height of the turbine from 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 forty-five 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.
- e. The impact upon military installations, assets, and operations.

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; July 1, 2019; July 1, 2020; _____.

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 an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.
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. This avoidance area may be waived by the owner.
 - 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; July 1, 2020; _____.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1



Wayne Stenehjem
ATTORNEY GENERAL

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OPINION

July 21, 2021

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 new N.D.A.C. ch. 69-09-11 concerning common pipeline carriers, and the proposed amended N.D.A.C. art. 69-06 concerning energy conversion facility siting criteria, 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 issued, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 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.

17 **PU-20-398** Filed: 7/22/2021 Pages: 1
Opinion - Rules in Compliance and Approved as to their Legality

North Dakota Attorney General

25 **PU-20-422** Filed: 7/22/2021 Pages: 1
Opinion - Rules in Compliance and Approved as to their Legality

North Dakota Attorney General

Sincerely,

Wayne Stenehjem
Attorney General

cc: Vonette J. Richter, Legislative Council

¹ The Public Service Commission requested publication of an abbreviated Notice of Intent to Adopt Administrative Rules and Notice of Public Hearing (Notice) in each official county newspaper. However, the Notice did not run in the *Mouse River Journal*. The Notice was published in 50 of the 51 official county newspapers of the state.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Common Pipeline Carriers
Rulemaking**

Case No. PU-20-398

**Statements on Regulatory Analysis, Small Entity Analysis,
Takings Assessment, and Fiscal Note**

October 22, 2020

The Commission is proposing a new Section to North Dakota Administrative Code Chapter 69-09-11, Common Pipeline Carriers. The purpose of the new Chapter 69-09-11, is to provide clarity regarding the filing and maintenance of common pipeline carrier tariffs.

The proposed rule is not the result of new legislation and is not pursuant to emergency rulemaking.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

1. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency or commission and the reasons why the methods were rejected in favor of the proposed rule.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis has been prepared.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property.

The proposed new chapter is not anticipated to limit the use of private property.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

a. Establishment of less stringent compliance or reporting requirements for small entities;

The proposed new chapter is not anticipated to impact small entities. As a result, not establishment of less stringent compliance or reporting requirements were provided.

b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;

The proposed new chapter is not anticipated to impact small entities. As a result, no additional schedules or deadlines were provided.

c. Consolidation or simplification of compliance or reporting requirements for small entities;

The proposed new chapter is not anticipated to impact small entities. As a result, there were no consolidation or simplification requirements provided.

d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and

The proposed new chapter is not anticipated to impact small entities. As a result, no performance standard is established.

- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

The proposed new chapter is not expected to impact small entities. As a result there is no exemption.

Small Entity Economic Impact Statement

The proposed new chapter is not anticipated to impact small entities. There are no additional costs required for compliance. It will clarify that common pipeline carrier tariffs do not need to be filed with the Commission annually. There is no probable effect on state revenues. This is the least intrusive and costly method of achieving the purpose of the proposed rule.

Fiscal Note

No fiscal impact is anticipated from the proposed new chapter.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-20-422

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

October 22, 2020

The Commission is proposing amendments to Article 69-06 of the North Dakota Administrative Code, Energy Conversion Facility Siting Criteria. The purpose of the proposed amendments are to address an omission in the definition of siting rules, correct agency names and add additional agencies to notify, change siting fee refunds, change filing requirements, specify required map and GIS requirements, eliminate corridor width requirements, addition of avoidance area around intercontinental ballistic missile facilities and launch control facilities, add a waiver for water transmission facilities near residences, schools, or places of business.

The proposed rule is not the result of new legislation and is not pursuant to emergency rulemaking.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

1. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency or

commission and the reasons why the methods were rejected in favor of the proposed rule.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). The proposed rule changing the avoidance area around intercontinental ballistic missile launch and control facilities from may potentially have costs associated with them. It is hard to determine if they would be over \$50,000.00 so an analysis follows.

- a. The class that would be affected is those in wind development.

The class to benefit from this is the 20th Air Force wing. The benefit they receive is increased operational safety in their security response to any threats at a missile site or launch control facility.

- b. The proposed rule would restrict the placement of towers but since this would be done in the planning state additional costs would be minimal if any.
- c. There are no perceived costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
- d. In the alternative placing this into an exclusion area was discussed and considered. Since this is a more restrictive and restricted development even further it was determined that an avoidance area would reduce negative impacts and any potential additional costs.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property.

The proposed amendments are not anticipated to limit the use of private property. Wind development is already affected by avoidance and exclusion areas this would not affect or limit the use of private real property any more than other avoidance and exclusion areas. Real property values would not be diminished by this proposed rule change.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

Small Entity Economic Impact Statement

The adoptions of these rules will not have an adverse impact on small entities. None of the rule changes would negatively impact them in a way that would require the commission to establish less stringent requirements, consolidation or simplification of reporting, establishing separate performance standards or exemptions from the proposed rule.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Common Pipeline Carriers
Rulemaking**

Case No. PU-20-398

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

Case No. PU-20-422

FISCAL NOTE

October 6, 2021

Adoption of the proposed rules in the captioned two cases are not expected to have any impact on State expenditures or revenues.

APPROVED

DATE: 10/06/2021
RJT

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Public Service Commission
Common Pipeline Carriers
Rulemaking**

Case No. PU-20-398

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

Case No. PU-20-422

MOTION

October 6, 2021

Having been approved by the Attorney General, I move the Commission adopt the proposed new Chapter 69-09-11, adopt proposed amendments to Article 69-06, and forward those proposed changes of the North Dakota Administrative Code to the Legislative Council for publication, in Public Service Commission, Common Pipeline Carriers, Rulemaking, PSC Case No. PU-20-398, and Public Service Commission, Energy Conversion Facility Siting Criteria, Rulemaking, PSC Case No. PU-20-422.

- 27 PU-20-422 Filed 10/06/2021 Pages: 1
Commission Motion to adopt proposed Rules and forward to Legislative Council
Public Service Commission
- 19 PU-20-398 Filed 10/06/2021 Pages: 1
Commission Motion to adopt proposed Rules and forward to Legislative Council
Public Service Commission