

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.