



A Proud Past – A Promising Future

McLean County

STATE OF NORTH DAKOTA

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TO: McLean County Commission
FROM: Ladd Erickson
DATE: March 3, 2020
RE: Proposed Zoning Amendments

NOTICE OF INTENT TO AMEND ZONING ORDINANCES

BACKGROUND

Electricity generation and transmission has been part of the McLean County landscape and economy since the late 1970’s. That history and story was submitted to the United States’ Court of Appeals for the District of Columbia (CADC) as part of North Dakota’s successful petition to stay implementation of the Clean Power Plan (CPP) proposed by President Obama’s administration. *See attachment 1.* The CPP had politicized the important issue of man-made climate change by failing to credit North Dakota with its investments in carbon reduction technology, and existing renewable and hydroelectric power. But those same things were credited in blue and swing states making for bad, selective, base politics and not scientifically sound climate change policy.

The proposed zoning amendments are intended to ensure the rich history of environmental sound electrical generation in McLean County and has legal siting rules that protect our citizen’s “general prosperity” and “public welfare.” *See N.D.C.C. § 11-33-01.*

NOTICE

Under § 1.11 of the Revised McLean County Zoning Ordinances, if a zoning permit application pertaining to the subject matter of these amendments is received by the county after the county commission adopts and approves publishing of these amendments, the application will be considered by the commission under any final amendments that are enacted into law.

The amendments are:

6.5.1 ELECTRICAL POWER TRANSMISSION LINES AND MORATORIUM RIGHTS. 1. The lines shall follow quarter section lines unless otherwise approved by the landowner and the McLean County Board of County Commissioners. All electrical power transmission lines from wind energy facilities are subject to §6.5.11(3) setbacks or avoidance zones. Any electrical power transmission line above 15 kilovolts (kV) must have a siting plan approved by the county before any installation or upgrade. Electrical power transmission sites and routes must be selected to minimize disorder and adverse human, economic, agricultural, environmental, and wildlife impacts in the county. If the county finds the site of an electrical power transmission line will unduly harm any of these specified public interests, it can deny the site permit. The county reserves the right to issue a moratorium for up to (24) twenty-four months for the siting or building of any new electrical power transmission lines, or electrical or energy generation facilities if the county needs time or information to study the impact of additional transmission lines or generation facilities on the health, safety, morals, public convenience, general prosperity, and public welfare of the citizens of McLean County. If the county exercises its moratorium rights it shall do so by written resolution of the county commission that is then published on the county website and official county newspaper. Any person has a right to appear before the county commission to protest any moratorium.

6.5.3 CHEMICAL FERTILIZER PLANTS, COAL GASIFICATION PLANTS, ELECTRICAL POWER GENERATING PLANTS, REFINERIES AND PETROCHEMICAL PLANTS. 1. A preliminary public hearing shall be conducted in the County concerning site location, needs of the plant, size and location of construction crews, employees, road, housing, community facilities, and County and community services. 2. The applicant shall provide twelve (12) copies of an environmental impact statement for distribution to the appropriate agencies. 3. Written evidence of approval by ~~North Dakota Department of Health on pollution controls~~ any necessary state or federal permitting agency shall be provided. 4. Written evidence of approval for a water permit from the North Dakota State Water Commission shall be provided. 5. Applicants shall conform to all requirements regarding preservation, removal, or relocation of historical or archaeological artifacts. 6. The county may require an applicant for a site permit for a new electrical power generation plant to provide the following written documentation: a) the proposed plant's greenhouse gas and other pollutant release spectrum so the public can determine the plant's impact to air quality and climate change; b) base load power plant needs in the relevant Regional Transmission Organization (RTO), including black or brown out or reliability risks in the RTO; c) impacts of the proposed plant on any other electrical generation plant in the county; d) impacts of the proposed plant to any coal mining activity in the county. 7. The county reserves the right to deny or hold in abeyance any site permit until any or all lands that are

under mining control are released from their bonds and returned to private ownership.

6.5.11 WIND ENERGY FACILITIES GENERAL PROVISIONS. 1. Public hearing required. A preliminary public hearing shall be conducted in the county concerning site location, needs of the operation and company employees regarding roads, housing, community facilities and county and community services. These hearings are separate from any environmental impact statement process that may be required. 2. The county incorporates and adopts all North Dakota Public Service Commission (NDPSC) laws and rules found in NDCC chapters 49-22 and 49-22.1, and NDAC chapter 69-06 as the county wind energy generation ordinance and may enforce those rules or laws independent of the NDPSC. The county reserves the right to list rules in addition to, or more restrictive than, NDPSC rules and those reservations and restrictions are enumerated in paragraph three (3). 3. County reservations and restrictions: a) the turbine setback from any section line, public right of way, or nonparticipating landowner's property line is one and one half the height of the turbine plus seventy- five (75) feet from the centerline; b) the turbine setback from a nonparticipating landowner's occupied residence is twenty-five (25) hundred feet; c) turbine(s) and any electrical power transmission lines from NDPSC permitted wind turbines, whether they are within the county or intrastate, and whether they were installed for existing energy sources, or new or upgraded energy sources, shall be setback at least one (1) mile beyond the ordinary high water mark of the Missouri River, Lake Sakakawea, and Lake Audubon; d) fees. The special use permit fee is .001 (1/10th of 1%) of the value of each wind turbine. If a turbine is in an organized township this fee will be provided to that township. An application fee of \$1000 shall be payable at the time of application for a special use permit, with the remainder of the special use permit fee remitted by the applicant prior to building permit application(s); e) the County reserves the right to reject a wind turbine permit application if the project could have a material adverse impact to area property values, agriculture, or wildlife. 4. Transfer of permit. The owner of an approved wind energy facility shall send written notice to the county auditor of any change in ownership of the facility and include the contact information of the subsequent purchaser. The purchaser of a wind energy facility shall keep the county updated with contact information and other matters pertinent to the county's zoning permit.

FULL NOTICE OF THESE AMENDMENTS WITH THE ATTACHMENT CAN BE FOUND ON THE COUNTY WEBSITE: www.mcleancountynd.gov

Following the adoption and publication of these amendments, THE COUNTY WILL HOLD A PUBLIC HEARING ON THE AMENDMENTS AT 7:00 P.M. IN THE UNDERWOOD CITY BUILDING, 88 LINCOLN AVE, UNDERWOOD, NORTH DAKOTA, ON MARCH 26, 2020.

Submitted by Ladd Erickson, McLean County State's Attorney, and adopted and approved for publication by the McLean County Commission on March 3, 2020.

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

STATE OF NORTH DAKOTA

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

**DECLARATION OF
Ladd Erickson
Case No. 15-1380**

I, Ladd R. Erickson, state and declare as follows:

1. My name is Ladd R. Erickson. I am over 21 years of age and am fully competent and duly authorized to make this Declaration. The facts contained in this Declaration are based on my personal knowledge and are true and correct.

2. I am employed as the McLean County State's Attorney. I have been employed by McLean County, North Dakota, since first being elected to my position in January, 2003, and have continuously served as the McLean County State's Attorney since that time.

3. As McLean County State's Attorney, I manage and direct all responsibilities of enforcing the laws of the State of North Dakota in McLean County, and I am the legal advisor for the McLean County Board of County Commissioners. On October 6, 2015, the McLean County Commission unanimously approved my submittal of this Declaration on behalf of McLean County.

4. McLean County is a rural agricultural county located in south central North Dakota. The Falkirk Coal Mine, owned by the North American Coal Corporation, and the Coal

Creek Electric Generating Station, owned by Great River Energy (GRE), operate in a conjoined area of McLean County near Underwood, North Dakota.

5. As the legal advisor for the McLean County Board of Commissioners, I am familiar with the Final Rule adopted by the United States Environmental Protection Agency (EPA), entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units: Final Rule.” 80 Fed. Reg. 64661 (Oct. 23, 2015) (The Final Rule) Unless a stay is granted, the Final Rule will cause significant and irreparable harm in and to McLean County.

6. Farm economics in the 1980s forced the consolidation of farmland into the hands of fewer large farms across North Dakota. Schools and businesses closed as farm families moved off the land to urban centers. Many rural towns either became a shadow of their former self, or simply ghost towns. This rural depression largely bypassed McLean County for one reason: the Falkirk Mine and Coal Creek Station power plant.

7. When coal mining began in McLean County in the late 1970s it created a vibrant local economy. Numerous businesses throughout the county thrived by having the stability of local energy production. In the decades since coal mining and power generation began in McLean County, miners and power plant workers have become fully woven into the very fabric of McLean County’s civil society. Coal energy production employees can be found sitting as our town mayors and city commissioners, our school and township board members, our volunteer firemen and ambulance responders, among other positions of civic responsibility.

8. A sudden EPA imposed collapse of Coal Creek Station’s and Falkirk Mine’s economic viability as a result of the Final Rule not only directly damages the power plant and mine, it sends shock waves through all McLean County communities and their governing boards.

If EPA's Final Rule is later found to be unlawful, the injury to McLean County cannot be undone. People will have lost jobs and moved on. The electrical grid access to sell power from Coal Creek Station will have changed, and businesses dependent on local coal energy production employees for customers may have to close. Simply, the impacts to McLean County would be broad and deep and not repairable for years, if they could be fixed at all.

9. When the EPA initially proposed their new coal-fired carbon dioxide emission regulations in 2014, North Dakota was required to reduce carbon emissions from coal-fired power plants by 11%. Without explanation or soliciting comments from North Dakota as to the EPA's new methodology, the Final Rule requires North Dakota to make an approximate 45% reduction in carbon dioxide emissions. Different states were given wholly different sets of federal carbon dioxide reduction benchmarks by the new EPA regulations.

10. The problem with the EPA finalizing its Rule without giving proper notice of its massive change to North Dakota's requirements under the Rule is that there are real people, with real families, that live and work in McLean County, North Dakota, who are significantly harmed.

11. Instead of being regulatory targets, Coal Creek Station and the Falkirk Mine should be recognized by the EPA as an example to others in how to produce energy with environmental soundness and sensibility. The examples of this are many:

a. At both Falkirk Mine and Coal Creek Station, hundreds of millions of dollars have been invested in environmental controls and first of a kind clean coal technologies. For example, starting in 1997 GRE, at Coal Creek Station, began researching a cutting edge coal drying system that uses excess heat from the power plant to dry coal before it is burned. Ultimately, the investment in this research resulted in the patented "DryFining" technology that has now been in operation at Coal Creek Station since 2009. DryFining reduces the moisture

content of lignite coal from 38% to 29%, which increases the heat value by nearly 1,000 BTU. This process has reduced carbon dioxide emissions at the plant, and has achieved reductions of 40% for mercury and sulfur dioxide, as well as 20% reduction in nitrogen oxide. Given that more than half of the coal reserves worldwide are considered low-rank, DryFining can serve as a vital technology to reduce emissions from coal-fired power plants around the world.

In addition, the development of DryFining technology assisted GRE with opening its Spiritwood Station in 2014. The Spiritwood Station is a 99-megawatt combined heat and power plant located 100 miles southeast of Coal Creek Station in Stutsman County, North Dakota. Thanks to DryFining, coal is viably mined at the Falkirk Mine, dried at Coal Creek Station to remove pollutants and simultaneously increase the coal's heat value, and then it is shipped by rail to the Spiritwood Station. What is puzzling, to the point of capriciousness, is Spiritwood Station is the Country's most modern environmentally advanced coal-fired power plant, with nearly double the efficiency of other lignite coal plants. Yet, the EPA's Final Rule may also challenge the Spiritwood Station's economic viability with the EPA's 45% reduction in carbon dioxide emission benchmark for North Dakota.

b. No greater example of the arbitrariness in the Final Rule can be found than in the EPA's failure to account for the dramatic carbon footprint reductions realized at both Coal Creek and Spiritwood Stations through the advanced technologies of using excess heat from these power plants to create ethanol, and in Spiritwood Station's case, malt from raw barley.

Federal policy, transcending multiple presidents from both political parties, has been to increase ethanol production as a renewable zero or low carbon fuel. Congress has subsidized this effort, and fuel standards have been set requiring ethanol/gasoline mixtures to encourage the use of ethanol. Ethanol policies historically had one big limiting factor – it took the burning of fossil

fuels to create the heat that was needed in the ethanol stills - and arguably more energy was used in making ethanol than was realized in the end product when traditional distillery methods were used.

That all changed at Coal Creek Station in 2006. Through large investments and risk to GRE, the Blue Flint Ethanol Plant was built alongside the power plant. This venture turned out to be a huge economic and environmental success story. Currently, excess heat from Coal Creek Station is piped into the Blue Flint facility where it is used to convert corn into ethanol. A local corn market for area farmers was created by this innovation and it has eliminated the costs and carbon dioxide releases that would be incurred by shipping millions of bushels of corn to far off markets. The Blue Flint facility produces 65 million gallons of ethanol each year utilizing steam from Coal Creek Station. That equates to a carbon dioxide emission reduction from gasoline of over 200,000 tons annually. In addition, after the corn is processed into ethanol at Blue Flint, the leftover “mash” or “distillers’ grains” are used by area ranchers to feed livestock – again reducing carbon dioxide emissions that would otherwise occur if ranchers had to grow or ship in feed separately.

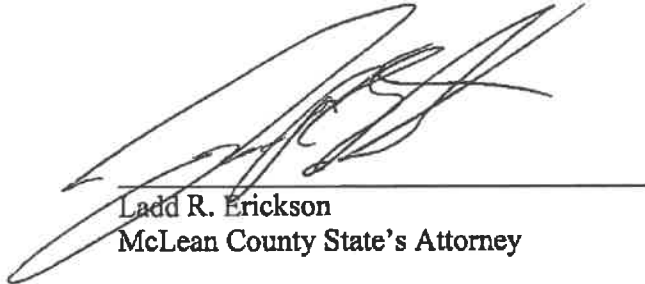
The question is begged: If for decades, Congress and our executive branch, including the EPA, has seen fit to promote carbon dioxide emission reductions through expanded ethanol use, provided extensive fuel standard regulations and massive taxpayer investments to support this federal policy, why then isn't Coal Creek and Spiritwood Stations given carbon credits in the EPA's Final Rule for the millions of gallons of ethanol these plants produce and put into our nation's fuel supply? But for GRE's investments and innovations in this area, excess heat from Coal Creek and Spiritwood Stations would just be dissipated into the air instead of being used to create a local corn market and a carbon friendly fuel. It is arbitrary for the EPA to target North

Dakota with draconian emission standards, while at the same time fail to credit Coal Creek and Spiritwood Stations for the substantial carbon dioxide reductions brought about by ethanol production through the use of excess power plant heat. In addition, prior to the Spiritwood Station opening last year, Cargill had to burn fossil fuels to make their barley malt product at Spiritwood. Now they use excess heat from the new Spiritwood Station power plant to make their malt, thus eliminating the former carbon dioxide emissions Cargill's malting process had without, again, any consideration being given for that in the new EPA carbon dioxide regulations.

c. GRE has also been at the forefront of creating "FlexCrete" from fly ash going back two decades. FlexCrete is a strong fiber-reinforced aerated concrete made from burnt coal, commonly called "fly ash." GRE sells approximately 400,000 tons of fly ash each year for this purpose. FlexCrete is made of 70% fly ash and has numerous advantages over traditional concrete. Without FlexCrete, Portland cement would have to be used as a substitute, increasing greenhouse gas emissions from mining that product, as opposed to GRE making a productive use out of what was formerly a waste product.

12. The dramatic job losses at Coal Creek Station and the Falkirk Mine brought on by the Final Rule, if implemented as written and scheduled, transcend beyond those two companies to McLean County as a whole. Other local businesses depend on having coal energy production nearby, as do local McLean County governing boards and schools. It is for these reasons that the McLean County Commission requests that the Final Rule be stayed until the courts can determine their constitutional and statutory legitimacy.

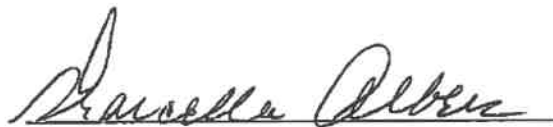
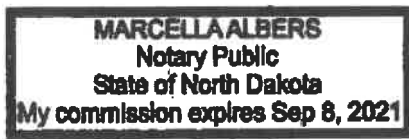
Executed on October 28th, 2015.



Ladd R. Erickson
McLean County State's Attorney

The foregoing Affidavit of Ladd R. Erickson was subscribed and sworn before me by Ladd R. Erickson on October 28, 2015.

Witness my hand and official seal.



Marcella Albers
Notary Public

My commission expires: