

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Rugby Wind, LLC
Rugby Wind Farm – Pierce County
Siting Application

Case No. PU-05-47

ORDER ON CONSENT AGREEMENT

June 29, 2022

Preliminary Statement

On October 3, 2005, in Case No. PU-05-47, the North Dakota Public Service Commission (Commission) issued Certificate of Site Compatibility Number 5 to Rugby Wind Farm, LLC's (Rugby Wind) predecessor, PPM Energy, Inc., designating a site for the construction, operation, and maintenance of an energy conversion facility site for the Rugby Wind Farm in Pierce County, North Dakota. On December 3, 2008, in Case No. PU-05-47, the Commission reissued Certificate of Site Compatibility Number 5 to Rugby Wind to construct and operate the Rugby Wind Farm in Pierce County, North Dakota.

On March 22, 2021, Rugby Wind petitioned for an extension from December 31, 2021, to December 31, 2022, to explore the installation of light intensity dimming solution (LIDS) technology. Rugby Wind requested that the Commission consider and issue a decision on the extension as soon as possible, stating "if an extension is not granted by May 2021, Rugby will be required to procure the ADLS system."

On April 20, 2021, an informal hearing was held on the request for an extension.

On May 10, 2021, Commission Staff filed a Memorandum supplementing the record regarding the approval status of LIDS technology by the Federal Aviation Administration (FAA).

On May 27, 2021, Rugby sent a letter informing the Commission that it would no longer pursue the LIDS technology stating, "[a]t this time, we are expediting the ADLS light mitigation solution in order to meet the existing statutory deadline of December 31, 2021."

On June 9, 2021, the Commission denied the first extension request.

On November 2, 2021, Rugby filed a second extension request, based upon unanticipated supply chain issues, to extend the deadline from December 31, 2021, to May 31, 2022, under North Dakota Century Code section 49-22-16.4 and North Dakota

Administrative Code section 69-06-11-02 for the installation of a functioning light-mitigating technology system at the Rugby Wind Farm.

On November 17, 2021, the Commission issued a notice for public hearing on the second application for extension in the above captioned case.

On December 17, 2021, the Commission held a public hearing as noticed.

On December 29, 2021, the Commission denied Rugby's second request for an extension to install ADLS.

On January 5, 2022, Staff sent Rugby a Notice of Noncompliance, noting that Rugby had violated N.D.C.C. 49-22-16.4(3) and N.D.A.C. 69-06-11-02(2) by failing to have a functioning ADLS at the Rugby Wind Farm by December 31, 2021. The Notice of Noncompliance noted that Rugby may be subject to civil penalty pursuant to N.D.C.C. 49-22-21 and that, in addition, the Commission may suspend or revoke the Certificate of Site Compatibility issued for Rugby for operation in violation of N.D.C.C., N.D.A.C., or provisions of the Commission's Order issuing the Certificate.

On February 10, 2022, Commission staff sent a request to Rugby for status updates on the installation progress of its ADLS.

On March 4, 2022, Commission staff received an update from Rugby, stating other civil work had been undertaken and completed while waiting for components to arrive. The tower had been erected and the remaining components were received and installed and testing of the ADLS Radar system was beginning.

On March 28, 2022, a second monthly status stated that on March 18, 2022, the ADLS system became operational.

Discussion

Rugby Wind owns and operates the Rugby Wind farm. Rugby Wind Farm is a 150-megawatt wind farm located in Pierce County.

North Dakota Century Code ("N.D.C.C.") Section 49-22-16.4(3) requires that "by December 31, 2021, every wind energy conversion facility for which the commission issued a certificate of site compatibility before June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules adopted by the commission. After a public hearing, the commission may grant a waiver or an extension of time based on technical or economic feasibility considerations." See also North Dakota Administrative Code ("N.D.A.C.") Section 69-06-11-02(1).

Certificate of Site Compatibility No. 5 for the Rugby Wind Farm was issued before June 5, 2016; therefore, it was required by N.D.C.C. Section 49-22-16.4(3) and N.D.A.C.

Section 69-06-11-02(2) to be equipped with a functioning light-mitigating technology by December 31, 2021. Commission Staff investigated the matter and concluded that Rugby Wind violated N.D.C.C. Section 49-22-16.4(3) and N.D.A.C. Section 69-06-11-02(2) by failing to have a functioning light mitigation technology at the Rugby Wind Farm by December 31, 2021.

Rugby Wind and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, Rugby Wind and Advocacy Staff compromised to a penalty of \$24,000 due to outside forces and supply chain issues.

Having considered this matter, the Commission finds the Consent Agreement filed on June 2, 2022, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement between Rugby and Advocacy Staff filed with the Commission on June 2, 2022, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Rugby is assessed a civil penalty of \$24,000 for violating N.D.C.C. Section 49-22-16.4(3) and N.D.A.C. Section 69-06-11-02(2), and PPM agrees to remit the \$24,000 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chair


Sheri Haugen-Hoffart
Commissioner

**BEFORE THE NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Rugby Wind, LLC
Rugby Wind Farm – Pierce County
Siting Application**

Case No. PU-05-47

Preliminary Statement

This Consent Agreement is entered into by and between Rugby Wind, LLC (“Rugby”) and the Public Service Commission Advocacy Staff (“Staff”) (together, the “Parties”) for resolution of Staff’s January 5, 2022 Notice of Noncompliance issued to Rugby in Case No. PU-05-47 (the “Matter”) concerning the Rugby Wind, LLC – Rugby Wind Farm Aircraft Detection Lighting System (“ADLS”).

ADLS Statute

North Dakota Century Code (“N.D.C.C.”) Section 49-22-16 4(3) requires that “by December 31, 2021, every wind energy conversion facility for which the commission issued a certificate of site compatibility before June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules adopted by the commission.” See *also* North Dakota Administrative Code (“N.D.A.C.”) Section 69-06-11-02(2).

Pursuant to N.D C.C. Section 49-22-21, “any person who willfully engages in any of the following conduct is subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day the violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:

...

- b. Constructs, operates, or maintains an electric energy conversion facility or an electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
- c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.”

Certificate of Site Compatibility – Energy Conversion Facility

On October 3, 2005, in Case No. PU-05-47, the North Dakota Public Utility Commission (Commission) issued Certificate of Site Compatibility Number 5 to Rugby's predecessor, PPM Energy, Inc., designating a site for the construction, operation and maintenance of an energy conversion facility site for the Rugby Wind Farm in Pierce County, North Dakota. On December 3, 2008, in Case No. PU-05-47, the Commission reissued Certificate of Site Compatibility Number 5 to Rugby Wind, LLC to construct and operate the Rugby Wind Farm in Pierce County, North Dakota.

ADLS Installation at Rugby Wind Farm

On March 22, 2021, Rugby Wind, LLC filed with the Commission a request for extension, from December 31, 2021, to December 31, 2022. Rugby Wind requested that the Commission consider and issue a decision on the extension as soon as is possible, stating “if an extension is not granted by May, 2021, Rugby will be required to procure the ADLS system.”

On April 20, 2021, an informal hearing was held on the request for extension.

On May 10, 2021, Commission Staff filed a Memorandum supplementing the record regarding the approval status of Light Intensity Dimming Solution (LIDS) technology by the Federal Aviation Administration (FAA).

On May 27, 2021, Rugby sent a letter informing the Commission that it would no longer pursue the LIDS technology, stating “[a]t this time, we are expediting the ADLS

light mitigation solution in order to meet the existing statutory deadline of December 31, 2021.”

On June 9, 2021, the Commission denied the first extension request.

On November 2, 2021, PPM filed a second extension request, based upon unanticipated supply chain issues, to extend the deadline from December 31, 2021, to May 31, 2022, under North Dakota Century Code section 49-22-16.4 and North Dakota Administrative Code section 69-06-11-02 for the installation of a functioning light-mitigating technology system at the Rugby Wind Farm.

On November 17, 2021, the Commission issued a notice for public hearing on the second application for extension in the above captioned case.

On December 17, 2021, the Commission held a public hearing as noticed.

On December 29, 2021, the Commission denied Rugby’s second request for an extension to install ADLS.

On January 5, 2022, Staff sent Rugby a Notice of Noncompliance, noting that NSP had violated N.D.C.C. 49-22-16.4(3) and N.D.A.C. 69-06-11-02(2) by failing to have a functioning ADLS at Rugby Wind Farm by December 31, 2021. The Notice of Noncompliance noted that Rugby may be subject to civil penalty pursuant to N.D.C.C. 49-22-21, and that, in addition, the Commission may suspend or revoke the Certificate of Site Compatibility issued for Rugby for operation in violation of N.D.C.C., N.D.A.C., or provisions of the Commission’s Order issuing the Certificate.

On February 10, 2022 Commission staff sent a request to Rugby Wind LLC for status updates on the installation progress on its ADLS installation.

On March 4, 2022, Commission staff received an update from Rugby Wind LLC, stating other civil work had been undertaken and completed while waiting for components to arrive. The tower had been erected and the remaining components were received and installed and testing of the ADLS Radar system was beginning.

On March 28, 2022, a second monthly status stating that on March 18, 2022 the ADLS system became operational.

Terms of Consent Agreement

Rugby and Staff engaged in good faith settlement discussions regarding this Matter resulting in this Consent Agreement. Having agreed that settlement of this Matter will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this Matter, the Staff and Rugby agree on the following terms, subject to the approval and acceptance of the Commission:

1. Staff and Rugby agree to settle the Matter on the following terms:
 - a. Rugby acknowledges that it did not have a functioning ADLS by December 31, 2021, and therefore did not comply with N.D.C C. 49-22-16.4(3) and N D A.C. 69-06-11-02(2).
 - b. Subject to the provisions of this Agreement, Rugby agrees to a civil penalty, payable to the North Dakota Public Service Commission, of \$48,000 for not complying with the ADLS statute.
 - c. As provided in N.D.C.C. 49-22-21(3) the civil penalty may be compromised by the Commission. The Commission acknowledges outside forces and events due to supply chain issues and the Covid pandemic that contributed to the delayed implementation of Rugby Winds ADLS system and reduces the civil Penalty to \$24,000.

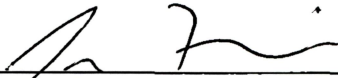
2. There are no covenants, promises, undertakings, or understandings related to the resolution of the Matter other than those specifically set forth in this Agreement and Order.
3. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
4. The undersigned on behalf of Rugby is authorized to act on behalf of Rugby and bind Rugby for purposes of this Consent Agreement and knows and fully understands the content and effect of this Consent Agreement.

Dated this 2nd day of June, 2022



Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission

Dated this 1st day of June, 2022



Name. Jace Fabrycki
Authorized Representative
Rugby Wind, LLC

LEGAL


DocuSigned by:
Stephanie La Pier
A3BA5DD8C98A4FD...



Name: Stephanie La Pier
Authorized Representative
Rugby Wind, LLC

Dated this 1st day of June, 2022