



October 19, 2021

**VIA E-MAIL**

North Dakota Public Service Commission  
c/o Steven Kahl, Executive Secretary  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505

**RE: DeTect Aircraft Detection and Light System Agreements  
Glen Ullin Energy Center Case No. PU-11-662  
Bison 1 Wind Project Case No. PU-09-151  
Bison 2 Wind Project Case No. PU-11-57  
Bison 3 Wind Project Case No. PU-11-162  
Bison 4 Wind Project Case No. PU-13-127**

Dear Mr. Kahl:

Please find attached a summary of the DeTect Aircraft Detection and Light System ("ALDS") agreements as requested by Chair Fedorchak at the public hearing on October 13, 2021 in the above-referenced case numbers.

If you have any questions or if the North Dakota Public Service Commission requires any additional information, please contact me at 218-723-3963 or [dmoeller@allete.com](mailto:dmoeller@allete.com).

Sincerely,

A handwritten signature in black ink that reads "David R. Moeller".

David R. Moeller  
*Senior Attorney and  
Director of Regulatory Compliance*

DRM:th  
Attach.

147 PU-11-57 Filed 10/19/2021 Pages: 5  
Aircraft Detection and Light System (ADLS) Agreement  
Allete, Inc.  
David Moeller, Sn. Attorney

## SUMMARY OF AGREEMENTS:

On the 11<sup>th</sup> day of February 2021, ALLETE Clean Energy, Inc. and Minnesota Power, each an operating division of ALLETE (collectively “ALLETE” or “Companies”) executed individual Major Supply Agreements (the “Agreement(s)”) with DeTect, Inc. (“Supplier”). The scope of work for each Agreement includes: the procurement of equipment, materials, and services to install an Aircraft Detection and Light System (“ADLS”) consisting of Federal Aviation Administration (“FAA”) compliant, on-demand, radar-activated obstruction lighting system. For the avoidance of doubt, each agreement has identical terms and conditions.

Each Agreement is subject to the payment and milestone schedule described below:

Date	Milestone	Percentage of Total Price
03.02.2021	Issuance of Design Drawings	10
03.17.2021	Completion of Procurement	20
04.16.2021	Start of manufacturing	20
05.16.2021	Completion of Infrastructure Components	15
06.15.2021	Completion of Electronics	15
09.13.2021	At Shipment	10
10.13.2021	At Commissioning	5
12.27.2021	Final Acceptance (Start Up)	5

The last invoice received by Seller was on June 16, 2021, and paid by Company on July 16, 2021.

As of July 16, 2021 Company has reimbursed Seller the amounts described below:

Agreement(s)	Agreement Sum	Total \$ Paid	Total % of Contract
Minnesota Power	\$562,625.00	\$385,820.11	68.6
Minnesota Power & Glen Ullin Tenants in Common	\$551,375.00	\$378,105.41	68.6

In late July 2021, Seller provided notice to Company that their radar manufacturer was facing supply chain instability and that the delivery of the radar equipment would be delayed until December 2021. No further payments will be made until delivery of the radar equipment.

## **AGREEMENT RIGHTS AND REMEDIES:**

Outlined below are the actual terms and conditions of the Agreements with which the Company has rights and remedies for governing delayed shipment.

### Termination for Convenience (Article 24 of the Agreement General Conditions):

24.1 Company may, at its option, terminate the Agreement in whole or in part at any time by written notice thereof to Supplier, whether or not Supplier is in default.

24.2 Upon any such termination, Company shall pay for all Work completed and the reasonable cost of demobilization, not to exceed the total price of the Agreement, as amended by Change Orders. No amount shall be allowed for anticipated profit on unperformed Work or overhead. Upon receipt of any such notice and unless the notice requires otherwise, Supplier shall forthwith:

24.2.1 Discontinue the Work (including the removal of workers and all other agents of Supplier from the Project Site);

24.2.2 Place no further orders or subcontracts as to the Work other than as may be necessary for completion of any such portion of the Work under the Agreement that is not terminated;

24.2.3 Make best efforts to obtain cancellation upon terms satisfactory to Company of all orders and subcontracts to the extent they relate to the performance of the Work terminated;

24.2.4 As directed by Company, assist in the maintenance, protection and disposition of materials, supplies or property acquired pursuant to the Agreement; and

24.2.5 Deliver to Company all Documents, Drawings, plans, reports, specifications, data, estimates, summaries or other material and information, whether or not complete, related to the Work.

24.3 Payment by Company of the amounts it is required to pay under this Section shall constitute full and final satisfaction by Company of all payment obligations required by this Agreement.

### Termination for Default (Article 25 of the Agreement General Conditions):

25.1 Company may, by written notice of default to Supplier terminate the whole or any part of the Agreement if:

- 25.1.1 Supplier or its Subcontractors fail to perform any of their material obligations under the Agreement or fail to make progress so as to endanger timely completion of the Work, and Supplier does not cure such failure within five (5) business days after receipt of notice by Company, or provide a plan that is acceptable to Company, in the sole discretion of Company, to commence a cure within five (5) business days after receipt of notice and diligently and continuously pursue a cure thereafter; or
  - 25.1.2 Supplier is generally unable to pay its debts as they come due, or makes an assignment for the benefit of creditors; or Supplier applies for or consents to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property, or such a receiver, trustee or similar officer is appointed without the application or consent of Supplier, and such appointment continues undischarged for a period of thirty (30) days; or Supplier institutes (by petition, application, answer or otherwise) any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution, liquidation or similar proceeding under the Applicable Law of any jurisdiction, or any such proceeding is instituted against Supplier and is not dismissed within thirty (30) days of filing.
- 25.2 In the event Company terminates the Agreement as provided in this Article 25, Company may at its option arrange for completion of the Work. Supplier shall be liable to Company for all direct costs incurred by Company to cure Suppliers default, as well as all third party costs, expenses and other damages of any kind or nature incurred by Company as a consequence of default by Supplier or its Subcontractors.
- 25.3 Unless otherwise stated in the notice, upon receipt of notice of termination for default, Supplier shall:
- 25.3.1 Immediately discontinue the Work on the date and to the extent specified in the notice;
  - 25.3.2 Place no further orders or subcontracts as to the Work, other than as may be necessary for completion of any such portion of the Work that is not terminated;
  - 25.3.3 Make every reasonable effort to obtain cancellation upon terms satisfactory to Company of all orders and subcontracts to the extent they relate to the performance of the Work terminated;
  - 25.3.3 Make every reasonable effort to obtain cancellation upon terms satisfactory to Company of all orders and subcontracts to the extent they relate to the performance of the Work terminated;
  - 25.3.4 As directed by Company, assist Company in the maintenance, protection and disposition of materials, supplies, property or the like acquired pursuant to the Agreement; and

- 25.3.5 Deliver to Company all Documents, Drawings, plans, reports, specifications, data, estimates, summaries or other material and information whether completed or in process related to the Work.
- 25.4 If after delivery of notice of termination it is determined for any reason that Supplier was not in default, Supplier's sole and exclusive remedy shall be the same as if Company had terminated the Agreement for convenience pursuant to Article 24 of these General Conditions.
- 25.5 The rights and remedies of Company provided in this Article 25 shall be in addition to the rights and remedies provided at law or equity or otherwise under the Agreement. No failure or delay on the part of Company in exercising any right shall operate as a waiver thereof.

Indemnification Obligations (Article 28 of the Agreement General Conditions):

28. Supplier agrees to defend, indemnify and hold harmless Company and its shareholders, members, partners, affiliates, employees, representatives and agents (including Company's third party beneficiaries and Company's construction manager and engineer) (collectively, the "**Company Indemnitees**") from and against all liability (including any strict liability) arising from any and all claims, suits, actions, costs (including reasonable attorneys fees and costs of investigation), expenses, damages, losses, fines, interest, penalties, assessments, judgments, demands, causes of action and litigation/arbitration of any kind or character (individually, a "**Claim**" and collectively, "**Claims**") arising from Supplier's (A) willful or negligent acts or omissions or those of Supplier's officers, employees, representatives, agents, affiliates or Subcontractors, or (B) breach of the Agreement, including passage of good and marketable title to the Work, that may be imposed on, incurred by or asserted by a third party against any Company Indemnitee. Supplier shall have the sole authority to direct the defense or settle any Claim indemnified by Supplier; provided, that Company may monitor such matters through counsel of its choice and at its own cost; and provided, further, that Supplier may not settle any indemnified Claim unless such settlement includes a release of, and the consent of (not to be unreasonably withheld) Company. The foregoing indemnity will be applicable whether or not materials, equipment or property were or are owned by Company. The indemnification obligations hereunder are not limited by insurance coverage; and shall survive the expiration or termination of the Agreement.

The Company has not exercised its rights as they apply to Section 24.1 or Section 25.1.1 due to extended lead-times associated with the re-procurement of materials and the risk of potentially further prolonging the project schedule. In addition, the Company has not exercised its rights as they apply to breach as outlined within Section 28 Subpart B of the indemnification obligation.