

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Courtenay Wind Farm, LLC
200.5 MW Wind Energy Conversion Facility-Stutsman
Siting Application**

Case No. PU-13-64

**Northern States Power Company / Courtenay Wind
Transfer of Site Certificate
Siting Application**

Case No. PU-15-174

ORDER ON CONSENT AGREEMENT

March 9, 2022

Preliminary Statement

On November 13, 2013, in Case No. PU-13-64, the Commission's Findings of Fact, Conclusions of Law and Order issued Certificate of Site Compatibility No. 36 to Courtenay Wind Farm, LLC for a 200.5 MW wind energy conversion facility in Stutsman County, North Dakota (Courtenay Project).

On August 24, 2015, in Case No. PU-15-174, the Commission's Findings of Fact, Conclusions of Law and Order approved the transfer of Certificate of Site Compatibility No. 36 from Courtenay Wind Farm, LLC to Northern States Power Company (NSP), and issued First Reissued Certificate of Site Compatibility No. 36 to NSP.

On December 8, 2016, in Case No. PU-15-174, NSP filed with the Commission a construction activity update indicating that the Courtenay Project went into commercial operation on December 1, 2016.

On September 10, 2021, NSP requested an extension for completing installation of an Aircraft Detection Lighting System (ADLS).

On December 15, 2021, the Commission denied the request for extension.

On December 31, 2021, NSP filed a Status Update with the Commission which stated that the ADLS installation at the Courtenay Project was completed on December 17, 2021, but 63 tower beacons (lights) were not responding to commands from its ADLS.

On January 5, 2022, Advocacy Staff sent NSP a Notice of Noncompliance, noting that NSP had violated North Dakota Century Code Section 49-22-16.4(3) and North Dakota Administrative Code Section 69-06-11-02(2) by failing to have a functioning ADLS at the Courtenay Project by December 31, 2021.

On January 10, 2022, NSP filed another Status Update with the Commission indicating that all the beacons had been rewired, the system had been tested, and the ADLS was fully operational on January 9, 2022.

On February 22, 2022, a Consent Agreement between Advocacy Staff and NSP was filed for resolution of the January 5, 2022 Notice of Noncompliance.

Discussion

Northern States Power Co. is a foreign corporation with a principal address of 414 Nicollet Mall, Minneapolis, MN 55401-1927.

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 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. 36 for the Courtenay Project 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 NSP 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 ADLS at the Courtenay Project by December 31, 2021.

NSP 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, NSP agrees to be assessed a civil penalty of \$4,500, payable to the North Dakota Public Service Commission.

Having considered this matter, the Commission finds the Consent Agreement filed on February 22, 2022, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement between Northern States Power Co. and Advocacy Staff filed with the Commission on February 22, 2022, is approved. A copy of the

Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).

2. NSP is assessed a civil penalty of \$4,500 for violating N.D.C.C. Section 49-22-16.4(3) and N.D.A.C. Section 69-06-11-02(2), and NSP agrees to remit the \$4,500 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**

**Northern States Power Company/Courtney Wind
Transfer of Site Certificate
Siting Application**

Case No. PU-15-174

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by and between Northern States Power Company (“NSP”), doing business as Xcel Energy, and the North Dakota Public Service Commission Advocacy Staff (“Staff”) (together, the “Parties”) for resolution of Staff’s January 3, 2020 Notice of Noncompliance issued to NSP in Case No. PU-15-174 (the “Matter”) concerning the Courtenay Wind, LLC – Courtenay Wind Energy Center 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. After 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).

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

On November 13, 2013, in Case No. PU-13-064, the Commission issued Certificate of Site Compatibility Number 36 to Courtenay Wind Farm, LLC designating a site for the construction, operation, and maintenance of a 200 MW wind project and associated facilities (“Courtenay Project”) in Stutsman County, North Dakota. On April 30, 2015, in Case No. PU-15-174, Northern States Power Company (NSP) filed an application to transfer Certificate of Site Compatibility Number 36 for the proposed Courtenay Project. Also, on April 30, 2015, in Case No. PU-15-175, NSP filed an application with the Commission seeking a Certificate of Public Convenience and Necessity (CPCN) for the Courtenay Project. NSP was previously granted an Advanced Determination of Prudence (ADP) for purchasing the output of the Courtenay Project through a Power Purchase Agreement (PPA) in Case No. PU-13-706. However, due to changed circumstances, a CPCN was required as NSP would be developing, constructing, owning, and operating the Courtenay Project.

On May 6, 2015, in Case No. PLI-15-181, NSP filed an application with the Commission seeking an Advanced Determination of Prudence (ADP) to develop, construct, own, and operate the proposed Courtenay Project resource addition. On May 11, 2015, in Case No. PU-15-183, NSP filed an application with the Commission seeking

to discontinue the forementioned power purchase ADP previously granted by the Commission in Case No. PU-13-706.

On August 24, 2015 the Commission approved Certificate of Public Convenience and Necessity Number 5876 authorizing NSP to acquire, construct, and operate the Courtenay Project in Stutsman County, North Dakota. Also on August 24, 2015, the Commission approved NSP's request for an Advance Determination of Prudence for the acquisition and development of the Courtenay Project as well as the transfer of Certificate of Site Compatibility Number 36 to NSP.

ADLS Installation at the Courtenay Wind Facility

On December 8, 2016, NSP filed a construction activity update with the commission indicating that the Courtenay Project went into commercial operation on December 1, 2016. Since the Certificate of Site Compatibility for Courtenay Wind was issued before June 5, 2016, it was required by the aforementioned statute to be equipped with a functioning light-mitigating technology by December 31, 2021.

On September 10, 2021, NSP filed a letter with the Commission indicating that landowner concerns over the location of the ADLS radar tower had resulted in additional negotiations and had delayed the manufacture and delivery of the tower and other project activities. Sensing that the delays might prevent the ADLS from being operational by the end of the year, the Company requested an extension of the statutory deadline for completing installation of the ADLS. On December 15, 2021, the Commission denied the request for extension. On December 31, 2021 NSP filed a Status Update with the Commission which stated that the ADLS installation at the Courtenay Project was completed on December 17, 2021 but that the 63 tower beacons (lights) were not

responding to commands from the ADLS. It was determined that additional wiring was needed on each beacon to enable compatibility with the ADLS, but due to high winds and subzero temperatures, only 18 of the beacons had been rewired thus far and the remaining beacons would not be completed until the following week. On January 5, 2022, Staff sent NSP 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 the Courtenay Project by December 31, 2021. The Notice of Noncompliance noted that NSP 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 the Courtenay Project for operation in violation of N.D.C.C., N.D.A.C., or provisions of the Commission's Order issuing the Certificate.

On January 10, 2022 NSP filed another Status Update with the Commission indicating that all the beacons had been rewired, the system had been tested, and the ADLS was fully operational on January 9, 2022.

Terms of Consent Agreement

NSP 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 NSP agree on the following terms, subject to the approval and acceptance of the Commission:

1. Staff and NSP agree to settle the Matter on the following terms:
 - a. NSP acknowledges that the Courtenay Project did not have a functioning ADLS by December 31, 2021, and therefore did not comply with N.D.C.C. 49-22-16.4(2) and N.D.A.C. 69-06-11-02(1).

- b. Subject to the provisions of this Agreement, NSP agrees to a civil penalty, payable to the North Dakota Public Service Commission, of \$4,500 (\$500 per day for 9 days) for not complying with the ADLS statute.
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 NSP is authorized to act on behalf of NSP and bind NSP for purposes of this Consent Agreement and knows and fully understands the content and effect of this Consent Agreement.

Dated this 22nd day of February, 2022



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

Dated this 18th day of February, 2022



Greg P. Chamberlain
Regional Vice President, Regulatory & Govt. Affairs
Northern States Power Co. - MN