

**BEFORE THE NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Brady Wind, LLC
Brady Wind Energy Center
Stark County**

Case No. PU-15-690

**Brady Wind II, LLC
Brady Wind II Energy Center
Stark & Hettinger Counties**

Case No. PU-16-042

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by and between Brady Wind, LLC, Brady Wind II, LLC (collectively “Brady I & II”), and the Public Service Commission Advocacy Staff (“Staff”) (together, the “Parties”) for resolution of the Notices of Noncompliance filed by Staff as Docket No. 187 in Case No. PU-15-690 and as Docket No. 136 in Case No. PU-16-042 regarding light-mitigating technology at the Brady Wind Energy Center and Brady II Wind Energy Center (collectively, the “Facilities”). Due to their proximity in location, the Facilities utilize a single Aircraft Detection Lighting System (“ADLS”), which consists of three separate radar towers. Therefore, the Parties have entered into a consolidated Consent Agreement.

Discussion

Background

1. On June 16, 2016, the North Dakota Public Service Commission (“Commission”) adopted an Order granting Brady Wind, LLC Certificate of Site Compatibility No. 48 for the construction, operation, and maintenance of the 150 megawatt (“MW”) Brady Wind Energy Center located in Stark County (Case No. PU-15-690).

2. On July 6, 2016, the Commission adopted an Order granting Brady Wind II, LLC Certificate of Site Compatibility No. 50 for the construction, operation, and maintenance of the 150 MW Brady II Wind Energy Center located in Stark and Hettinger Counties (Case No. PU-16-042).

3. Finding of Fact paragraph 46 in the Commission's June 16 and July 6 Orders stated that subject to Federal Aviation Administration approval, Brady I & II will use commercially reasonable efforts to install ADLS or other technology suitable to the Commission as soon as practicable after commercial operation, and in any event by no later than December 31, 2018.
4. Subsequent to issuance of the Commission's Orders, N.D.C.C. § 49-22-16.4 was enacted and became effective on August 1, 2017. Section 49-22-16.4 established a new compliance deadline, requiring that facilities permitted by the Commission after June 5, 2016 be equipped with a functioning light-mitigating technology system by December 31, 2019.
5. On December 11, 2019, Staff inquired as to the status of light-mitigating technology at the Facilities, and requested Brady I & II to provide information by December 31, 2019.
6. On December 31, Brady I & II filed updates with the Commission indicating that the ADLS had been installed and test flights and final software tuning were occurring that afternoon.
7. On January 2, 2020, Brady I & II notified the Commission that it was completing additional safety testing of the ADLS.
8. On January 3, 2020, Brady I & II notified the Commission that ADLS had been fully activated at the Facilities on January 2.
9. On January 3, 2020, Staff issued Notices of Noncompliance to Brady I & II alleging noncompliance with the provisions of N.D.C.C. § 49-22-16.4(2) and N.D. Admin Code § 69-06-11-02(1), filed as Docket No. 187 in Case No. PU-15-690 and Docket No. 136 in Case No. PU-16-042 (collectively, the "Notices").
10. On February 10, 2020, in response to the Notices, Brady I & II filed information that outlines the history of Brady I & II's ADLS installation efforts and includes additional details regarding Brady I & II's previous December 31 and January 2 ADLS status updates filed with the Commission. *See*, Affidavit of Daniel Gerard.

Terms

11. Brady I & II and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of the Notices will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving the Notices, Staff and Brady I & II agree to resolve the alleged non-compliance in the Notices on the following terms:

- a. Nothing in this Consent Agreement shall be considered as an admission of any wrongdoing, violation, omission, or fault with respect to the Notices.
- b. Brady I agrees to make payable to the North Dakota Public Service Commission a total collective assessment of \$5,000, within 10 business days of service of an Order approving the Consent Agreement ("Order"). Brady II agrees to make payable to the North Dakota Public Service Commission a total collective assessment of \$5,000, within 10 business days of service of an Order. Staff agrees no other proceeding will be initiated against Brady I & II based on the violations alleged in the Notices and no other remedy will be sought based on the violations alleged in the Notices.
- c. If the Consent Agreement is approved by the Commission, Brady I & II agree not to contest Staff's allegations with respect to the Notices, and Brady I & II expressly waive any further procedural requirements with respect to the adoption of the Order approving the Consent Agreement. Provided the Commission approves this Consent Agreement and adopts an Order consistent with it, Brady I & II waives its right to contest the validity of this Consent Agreement and the Order, and waives all rights to administrative or judicial hearings or appeals of the Case.
- d. If the Commission's Order modifies or conditions approval of this Consent Agreement, it shall be deemed terminated if any settling party files a letter with the Commission within three business days of notice of such an Order stating that a condition of modification to the Consent Agreement is unacceptable to such party.
- e. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement of Order.
- f. 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.
- g. The undersigned on behalf of Brady I & II, is authorized to act on behalf of each entity, and bind Brady I & II for the purposes of this Consent Agreement, and knows and fully understands this Consent Agreement's content and effect.

[Reminder of this page intentionally left blank]

Dated this 19th day of February, 2020.

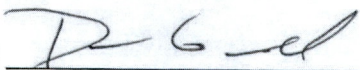
Public Service Commission
Advocacy Staff

By: 

Name: Brian Johnson

Title: Special Assistant Attorney General for PSC

Dated this 17th day of February, 2020.

By: 

Name: Daniel Gerard

Brady Wind, LLC

Title: Vice President

Brady Wind II, LLC

Title: Vice President