

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Oliver Wind III, LLC
Oliver III Wind Energy Center – Oliver & Morton
Siting Application**

Case No. PU-16-123

ORDER ON CONSENT AGREEMENT

March 4, 2020

Preliminary Statement

On January 3, 2020, Commission Advocacy Staff (Staff) sent a Notice of Noncompliance to Oliver Wind III, LLC (Oliver III) alleging a violation by Oliver III of North Dakota Century Code (N.D.C.C.) section 49-22-16.4(2) and North Dakota Administrative Code (N.D.A.C.) section 69-06-11-02(1).

On January 6, 2020, Oliver III provided a status update regarding the installation of an Aircraft Detection Lighting System (ADLS) at the Oliver III Wind Energy Center.

On February 10, 2020, Oliver III filed an affidavit of Daniel Gerard in response to the January 3 Notice of Noncompliance.

On February 19, 2020, a Consent Agreement between Staff and Oliver III was filed for the resolution of the Notice of Noncompliance.

Discussion

Oliver III is a foreign limited liability company with principal address of 700 Universe Boulevard, Juno Beach, Florida, 33408.

On June 22, 2016, the Commission adopted an Order granting Oliver III a Certificate of Site Compatibility for the construction, operation, and maintenance of the Oliver III Wind Energy Center located in Oliver and Morton Counties.

Subsequent to issuance of the Commission's Order, N.D.C.C. section 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.

On July 1, 2018, N.D.A.C. § 69-06-11-02(1) became effective. Section 69-06-11-02(1) requires that facilities permitted by the Commission after June 5, 2016 be equipped with a functioning light-mitigating technology in compliance with this chapter by December 31, 2019.

Staff alleges a violation by Oliver III of N.D.C.C. section 49-22-16.4(2) and N.D.A.C. section 69-06-11-02(1) for failure to equip the Oliver III Wind Energy Center with a functioning light-mitigating technology system by December 31, 2019.

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

Oliver III agrees to be assessed a civil penalty of \$7,500 payable to the North Dakota Public Service Commission within ten business days of service of an Order approving the Consent Agreement.

The affidavit of Daniel Gerard, Vice President of Oliver III, outlined several mitigating factors for the company failing to meet the December 31, 2019 deadline:

1. Oliver III realized a four-month delay in receiving the radar units necessary to operate the system from the sole FAA-approved ADLS vendor at the time. The radar units were scheduled to arrive in August 2019 and the actual delivery date was mid-November. This left a very limited window in which to complete installation of the system.
2. Oliver III, at the recommendation of its vendor, elected to create a redundant communications path to provide a secondary means of ensuring the turbine communications system was operating. This additional safety measure moved the company two days beyond the December 31 deadline.

Having considered this matter, the Commission finds the Consent Agreement filed on February 19, 2020, with a modified fine of \$1,500 is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Oliver III and Staff, filed February 19, 2020, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Oliver III is assessed a civil penalty of \$1,500.

3. Oliver III shall remit \$1,500 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



Julie Fedorchak
Commissioner



Brian Kroshus
Chairman



Randy Christmann
Commissioner

**BEFORE THE NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Oliver Wind III, LLC
Oliver III Wind Energy Center
Oliver and Morton Counties**

Case No. PU-16-123

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by and between Oliver Wind III, LLC (“Oliver III”), and the Public Service Commission Advocacy Staff (“Staff”) (together, the “Parties”) for resolution of the Notice of Noncompliance filed by Staff as Docket No. 160 in Case No. PU-16-123 regarding light-mitigating technology at the Oliver III Wind Energy Center (the “Facility”).

Discussion

Background

1. On June 22, 2016, the North Dakota Public Service Commission (“Commission”) adopted an Order granting Oliver Wind III Certificate of Site Compatibility No. 49 for the construction, operation, and maintenance of the 100 megawatt (“MW”) Oliver III Wind Energy Center located in Oliver and Morton Counties (Case No. PU-16-123).
2. Finding of Fact paragraph 46 of the Commission’s June 22 Order stated that subject to Federal Aviation Administration approval, Oliver III will use commercially reasonable efforts to install an Aircraft Detection and Lighting System (“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.
3. Subsequent to issuance of the Commission’s Order, 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.
4. On December 19, 2019, Staff inquired as to the status of light-mitigating technology at the Facility, and requested Oliver III to provide information by December 31, 2019.
5. On December 31, Oliver III filed an update with the Commission indicating that the ADLS had been installed and test flights and final software tuning were occurring that afternoon.

6. On January 2, 2020, Oliver III notified the Commission that it was completing additional safety testing of the ADLS.
7. On January 3, 2020, Staff issued a Notice of Noncompliance to Oliver III 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. 160 in Case No. PU-16-123 (the "Notice").
8. On January 6, 2020, Oliver III notified the Commission that ADLS had been fully activated at the Facility on January 3.
9. On February 10, 2020, in response to the Notice, Oliver III filed information that outlines the history of its ADLS installation efforts and includes additional details regarding its previous December 31 and January 2 ADLS status updates filed with the Commission. *See*, Affidavit of Daniel Gerard.

Terms

10. Oliver III and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of the Notice will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving the Notice, Staff and Oliver III agree to resolve the alleged non-compliance described in the Notice on the following terms:

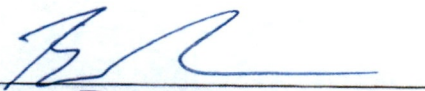
- a. Nothing in this Consent Agreement shall be considered as an admission of any wrongdoing, violation, omission, or fault with respect to the Notice.
- b. Oliver III agrees to make payable to the North Dakota Public Service Commission, a total collective assessment of \$7,500, within 10 business days of service of an Order approving the Consent Agreement ("Order"). Staff agrees no other proceeding will be initiated against Oliver III based on the violations alleged in the Notice and no other remedy will be sought based on the violations alleged in the Notice.
- c. If the Consent Agreement is approved by the Commission, Oliver III agrees not to contest Staff's allegations with respect to the Notice, and Oliver III expressly waives 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, Oliver III 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 Order stating that a condition or 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 Oliver III, is authorized to act on behalf of, and bind Oliver III for the purposes of this Consent Agreement, and knows and fully understands this Consent Agreement's content and effect.

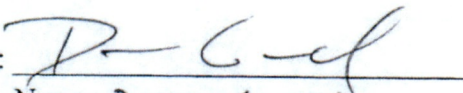
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Dated this 19th day of February, 2020.

Public Service Commission
Advocacy Staff

By: 
Name: Brian Johnson
Title: Special Assist Attorney General for PSC

Dated this 17th day of February, 2020.

By: 
Name: Daniel Gerard
Title: Vice President
Oliver Wind III, LLC