

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

MONTANA-DAKOTA UTILITIES CO.
Thunder Spirit Wind Project
Siting Application

Case No. PU-17-192

CONSENT AGREEMENT

This Consent Agreement is entered by and between Montana-Dakota Utilities Co. (the "Company") and the Public Service Commission Advocacy Staff ("Staff") (together the "Parties") for resolution of certain allegations of noncompliance made by Staff against Company regarding light-mitigating technology at the Thunder Spirit Wind Facility near Hettinger, North Dakota.

Discussion

1. The Company owns the Thunder Spirit wind energy conversion facility located near Hettinger, North Dakota (the "Facility").
2. The Facility is affected by the North Dakota wind energy conversion facility lighting mitigation requirements set forth in North Dakota Century Code Section 49-22-16.4.
3. Absent an extension of time, the light mitigation statutes required the Facility to be equipped with a functioning light-mitigation technology system by December 31, 2021.
4. On October 5, 2020, the Company made a request for an extension of time to allow for Light Intensity Dimming Solution (LIDS) technology to be approved by the Federal Aviation Administration (FAA), rather than installing the more costly Aircraft Detection Lighting System. (ADLS).
5. On February 17, 2021, the North Dakota Public Service Commission (the "Commission") granted the Company an extension of time until the earlier of either (A) one year following the FAA's decision to approve or deny LIDS, or (B) December 31, 2022. ADLS or another system approved by the FAA was to be installed and operational by December 31, 2022 if the LIDS system was not approved in time to meet the December 31, 2022 deadline.
6. On July 27, 2021, the Company made the decision to move forward and install ADLS at the Facility. This decision was made after considering the extension deadline, the delay in LIDS approval by the FAA, and an ongoing microchip shortage affecting production of key components of ADLS technology which could create supply chain issues.
7. The Company began procuring the ADLS on October 13, 2021. Construction on installation of ADLS began on May 24, 2022.

8. On August 17, 2022, the Company began the licensing process with the FAA to utilize the ADLS at the Facility.
9. Construction of the ADLS was completed on October 31, 2022.
10. On November 2, 2022, the FAA rejected the Company's initial application for a license to operate the ALDS due to a perceived obstruction hazard with respect to the proximity of the ADLS radar towers proximity to the Hettinger Airport. The Company, with assistance of its consultant, later identified a potential procedural issue with the filing. The Company filed a second application on November 21, 2022, after resolving the outstanding procedural issue, and worked with the FAA to resolve the obstruction issue by detailing existing FAA approvals and plans in place to avoid an actual obstruction hazard.
11. The Company completed all testing of the ADLS by December 30, 2022. The ADLS at the Facility was fully physically capable of operation as of December 30, 2022.
12. However, the FAA did not grant the Company a license to utilize the ADLS at the Facility until January 4, 2023.
13. The ADLS at the Facility was energized on January 4, 2023.
14. On January 11, 2023, Staff contacted the Company alleging noncompliance with the light mitigation statutes.

Terms

15. The Company and Staff have engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this alleged noncompliance will avoid further administrative proceedings or litigation and that this Consent Agreement is the most appropriate means of resolving the issue, Staff and the Company agree to resolve the alleged noncompliance on the following terms:
 - A. Nothing in this Consent Agreement shall be considered an admission of any wrongdoing, violation, omission, or fault with respect to the allegations of noncompliance.
 - B. The Company agrees to make payable to the Commission a total collective assessment of \$2,000 within ten business days of service of an Order approving the Consent Agreement. Staff agrees no other proceeding will be initiated against the Company, and no other remedy will be sought based on these allegations.
 - C. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. Accordingly, the Company agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose.

- D. If the Consent Agreement is approved by the Commission, the Company waives any further procedural requirements with respect to the adoption of the Order approving the Consent Agreement. Provided the Commission adopts the Consent Agreement and adopts an Order consistent with it, the Company waives its right to contest the validity of the Consent Agreement and the Order and waives its rights to administrative or judicial review of the same.
- E. If the Commission's Order modifies or conditions approval of this Consent Agreement, it shall be deemed terminated if either Party files a letter with the Commission within five business days of notice of such an Order stating that a condition of modification to the Consent Agreement is unacceptable to such party.
- F. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement.
- G. 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.
- H. The undersigned on behalf of the Company is authorized to act on behalf of the Company and bind the Company for purposes of this Consent Agreement and knows and fully understands the content and effect of this Consent Agreement.

Dated this 6th day of February, 2023.

PUBLIC SERVICE COMMISSION ADVOCACY STAFF

By: _____



Dated this 3rd day of February, 2023.

MONTANA-DAKOTA UTILITIES CO.

By: _____



Garret Senger
EVP, Regulatory Affairs, Customer Service & Admin.
Montana-Dakota Utilities Co.