

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Montana-Dakota Utilities Co.  
Thunder Spirit Wind Project  
Siting Application**

**Case No. PU-17-192**

**ORDER ON CONSENT AGREEMENT**

**February 22, 2023**

**Preliminary Statement**

On October 9, 2013, in Case No. PU-11-601, the North Dakota Public Service Commission (Commission) issued Certificate of Site Compatibility Number 35 to Thunder Spirit Wind, LLC, designating a site for the construction, operation, and maintenance of an energy conversion facility site for the Thunder Spirit Wind Project (Thunder Spirit) in Adams County, North Dakota. On August 16, 2017, in Case No. PU-17-192, the Commission reissued Certificate of Site Compatibility Number 35 to Montana-Dakota Utilities Co. (MDU) to construct and operate Thunder Spirit in Adams County, North Dakota.

On October 5, 2020, MDU petitioned for an extension from December 31, 2021, to December 31, 2022, to explore the installation of light intensity dimming solution (LIDS) technology.

On February 7, 2021, the Commission granted MDU's request for an extension to install ADLS requiring that LIDS must be installed at Thunder Spirit by the earlier of (a) one year following the FAA's decision to approve or deny LIDS, or (b) December 31, 2022.

On July 27, 2021, MDU made the decision to abandon its plans for a LIDS and move forward to install a standard Aircraft Detection Lighting System (ADLS) due to delays in approval by the Federal Aviation Administration (FAA).

On October 13, 2021, MDU began procuring ADLS equipment.

On August 17, 2022, MDU began the ADLS licensing process with the FAA.

On October 31, 2022, MDU completed construction of the ADLS at Thunder Spirit.

On December 30, 2022, MDU completed testing of the ADLS.

On January 4, 2023, the FAA granted MDU's ADLS license and MDU activated the ADLS for Thunder Spirit.

On January 6, 2023, MDU filed a final update on the commissioning of its ADLS for Thunder Spirit. The update stated that on January 4, 2023, the ADLS system became operational.

### **Discussion**

MDU owns and operates Thunder Spirit. Thunder Spirit is a 155.5-megawatt wind energy conversion facility located in Adams County, North Dakota.

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 a 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. 35 for Thunder Spirit 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. The Commission's February 7, 2021, Order extended this due date to December 31, 2022. Commission Staff investigated the matter and concluded that MDU violated the Commission's February 7, 2021, Order by failing to have functioning light mitigation technology at Thunder Spirit by December 31, 2022.

MDU 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, MDU and Advocacy Staff compromised to a penalty of \$2,000.

Having considered this matter, the Commission finds the Consent Agreement filed on February 6, 2023, is reasonable and acceptable. Therefore, the Commission issues the following:

### **Order**

The Commission Orders:

1. The Consent Agreement between Montana-Dakota Utilities Co. and Advocacy Staff filed with the Commission on February 6, 2023, is approved. A copy of the

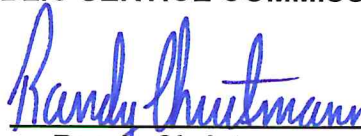
Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).

2. Montana-Dakota Utilities Co. is assessed a civil penalty of \$2,000 for violating the Commission's February 7, 2021, Order, and shall remit \$2,000 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting or approving the Consent Agreement.

3. For identification 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 Montana-Dakota Utilities Co. shall provide the Commission with an U.S. Department of the Treasury Internal Revenue Service Code Form W-9 for the purpose of the identification requirement of 26 U.S.C. § 162(f)(2)(A)(ii) within ten days of the issuance of the Order.

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
Sheri Haugen-Hoffart  
Commissioner

  
\_\_\_\_\_  
Randy Christmann  
Chair

  
\_\_\_\_\_  
Julie Fedorchak  
Commissioner

**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 6<sup>th</sup> day of February, 2023.

PUBLIC SERVICE COMMISSION ADVOCACY STAFF

By:  \_\_\_\_\_

Dated this 3<sup>rd</sup> day of February, 2023.

MONTANA-DAKOTA UTILITIES CO.

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