

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Emmons-Logan Wind, LLC
Emmons-Logan Wind Energy Center – Emmons & Logan
Siting Application

Case No. PU-18-280

ORDER ON CONSENT AGREEMENT

April 29, 2020

Preliminary Statement

On January 3, 2020, Commission Advocacy Staff (Staff) sent a Notice of Noncompliance to Emmons Logan Wind, LLC (Emmons Logan) alleging a violation by Emmons Logan 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).

Between December 13, 2019 and January 10, 2020, Emmons-Logan provided weekly updates to the Commission that ADLS and supporting components remained pending delivery to the site.

On March 18, 2020, Emmons-Logan filed an affidavit of Daniel Gerard in response to the January 3 Notice of Noncompliance.

On April 21, 2020, a Consent Agreement between Staff, Emmons-Logan was filed for the resolution of the Notice of Noncompliance.

Discussion

Emmons-Logan Wind, LLC is a Delaware limited liability company and is a wholly owned, indirect subsidiary of NextEra Energy Resources, LLC.

On July 19, 2018, in Case No. PU-18-280, Emmons-Logan Wind, LLC (Emmons-Logan Wind) filed an Application for a Certificate of Site Compatibility (Application) for a 298.1 MW wind energy conversion facility known as the Emmons-Logan Wind Energy Center (Project), to be located in Emmons and Logan Counties, North Dakota.

On February 6, 2019, the Commission adopted an Order granting Emmons-Logan a Certificate of Site Compatibility for the construction, operation, and maintenance of the

Emmons-Logan Wind Energy Center located in Emmons and Logan Counties (Case No. PU-18-280).

Subsequent to issuance of the Commission's Orders, 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 Emmons-Logan 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 Emmons-Logan Wind Energy Center with a functioning light-mitigating technology system by December 31, 2019.

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

Emmons-Logan agrees to be assessed a civil penalty of \$5,000 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 Emmons-Logan, outlined several mitigating factors for the company failing to meet the December 31, 2019 deadline:

1. On November 25, 2019, Emmons-Logan proactively notified the Commission that due to difficulties with its Aircraft Detection Lighting System ("ADLS") vendor's supply chain, the radar unit for the ADLS was pending delivery from an overseas supplier. Based on estimates from its ADLS vendor, Emmons-Logan anticipated it would take several months for the radar system to be delivered, installed, and tested, and that the ADLS system would not be activated until the first quarter of 2020.
2. On January 17, 2020, Emmons-Logan notified the Commission the ADLS radar system had arrived to the United States and was pending processing by U.S Customs. On January 24, 2020, Emmons-Logan notified the Commission that the ADLS radar system had cleared customs and had been received by the ADLS vendor.
3. On January 31, 2020, Emmons-Logan notified the Commission that the radar system and additional system components had been delivered to the site and installed, and that test flights were scheduled to occur the week of February 3.

4. On February 7, 2020, Emmons-Logan notified the Commission that Emmons-Logan had activated the ADLS, conducted preliminary test flights with local pilots, software testing and fine tuning, and planned to conduct a second round of test flights for the week of February 10, 2020.
5. On February 13, 2020, Emmons-Logan notified the Commission ADLS had been fully activated at the Facility as of February 11.

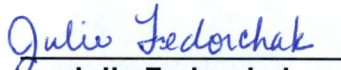
Having considered this matter, the Commission finds the Consent Agreement filed on April 21, 2019, with a modified fines of \$5,000 for Emmons-Logan is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Emmons-Logan and Staff, filed April 21, 2020, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Emmons-Logan is assessed a civil penalty of \$5,000.
3. Emmons-Logan shall remit \$5,000 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**

**Emmons-Logan Wind, LLC
Emmons-Logan Wind Energy Center
Emmons & Logan Counties**

Case No. PU-18-280

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by and between Emmons-Logan Wind, LLC (“Emmons-Logan”), and the Public Service Commission Advocacy Staff (“Staff”) (together, the “Parties”) for resolution of the Notice of Noncompliance filed by Staff as Docket No. 159 in Case No. PU-18-280 regarding light-mitigating technology at the Emmons-Logan Wind Energy Center (the “Facility”).

Discussion

Background

1. On February 6, 2019, the North Dakota Public Service Commission (“Commission”) adopted an Order granting Emmons-Logan Certificate of Site Compatibility No. 57 for the construction, operation, and maintenance of the Emmons-Logan Wind Energy Center located in Emmons and Logan Counties, North Dakota filed as Docket No. 101 in Case No. PU-18-280, as amended. On August 6, 2019, the Commission issued an Order amending the February 6 Order with respect to turbine model type and capacity and the Facility’s Tree and Shrub Mitigation Specifications. Docket No. 140.
2. North Dakota Century Code § 49-22-16.4 and North Dakota Administrative Code § 69-06-11-02(1) require that facilities permitted by the Commission after June 5, 2016 be equipped with a functioning light-mitigating technology system by December 31, 2019.
3. On November 25, 2019, Emmons-Logan proactively notified the Commission that due to difficulties with its Aircraft Detection Lighting System (“ADLS”) vendor’s supply chain, the radar unit for the ADLS was pending delivery from an overseas supplier. Based on estimates from its ADLS vendor, Emmons-Logan anticipated it would take several months for the radar system to be delivered, installed, and tested, and that the ADLS system would not be activated until the first quarter of 2020. Docket No. 152.

4. On December 6, 2019, Staff responded to Emmons-Logan's November 25 ADLS notification. Staff acknowledged Emmons-Logan's efforts to provide advance notice of the issues Emmons-Logan was experiencing in implementation of its ADLS system. The December 6 response stated Emmons-Logan will be in noncompliance with N.D.C.C. § 49-22-16.4 and N.D. Admin. Code § 69-06-11-02 unless the radar system was installed and the ADLS system was functioning by December 31, 2019. Staff requested that beginning December 13, 2019, Emmons-Logan provide weekly updates to the Commission regarding the status of ADLS until such time as the ADLS is installed and functioning. Docket 154.
5. Starting December 13, 2019, Emmons-Logan began to file weekly ADLS status updates with the Commission in accordance with Staff's December 13 request. Docket No. 156.
6. On January 3, 2020, Staff issued a Notice of Noncompliance to Emmons-Logan 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. 159 (the "Notice").
7. Between December 13, 2019 and January 10, 2020, Emmons-Logan provided weekly updates to the Commission that ADLS and supporting components remained pending delivery to the site. Docket Nos. 156-158, 160, 161.
8. On January 17, 2020, Emmons-Logan notified the Commission the ADLS radar system had arrived to the United States and was pending processing by U.S Customs. Docket No. 164.
9. On January 24, 2020, Emmons-Logan notified the Commission that the ADLS radar system had cleared customs and had been received by the ADLS vendor. Docket No. 165.
10. On January 31, 2020, Emmons-Logan notified the Commission that the radar system and additional system components had been delivered to the site and installed, and that test flights were scheduled to occur the week of February 3. Docket No. 166.
11. On February 7, 2020, Emmons-Logan notified the Commission that Emmons-Logan had activated the ADLS, conducted preliminary test flights with local pilots, software testing and fine-tuning, and planned to conduct a second round of test flights for the week of February 10, 2020. Docket No. 167.
12. On February 13, 2020, Emmons-Logan notified the Commission ADLS had been fully activated at the Facility as of February 11. Docket No. 168.

13. On March 18, 2020, in response to the Notice, Emmons-Logan filed information that outlines the history of its ADLS installation efforts and includes additional details regarding its previous status updates filed with the Commission. *See*, Affidavit of Daniel Gerard. Docket No. 171.

Terms

14. Emmons-Logan 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 Emmons-Logan 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. The Parties acknowledge that the delay in delivery of the ADLS radar system and associated components to the Facility is a mitigating factor to the timing of ADLS installation and activation.
- c. Emmons-Logan agrees to make payable to the North Dakota Public Service Commission, a total collective assessment of \$5,000.00, within 10 business days of service of an Order approving the Consent Agreement (“Order”).
- d. Staff has determined the terms of this Consent Agreement are in the public interest and are supported by the particular facts and mitigating factors unique to this case. Staff agrees no other proceeding will be initiated against Emmons-Logan based on the violations alleged in the Notice and no other remedy will be sought based on the violations alleged in the Notice.
- e. If the Consent Agreement is approved by the Commission, Emmons-Logan agrees not to contest Staff’s allegations with respect to the Notice, and Emmons-Logan 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, Emmons-Logan 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.

- f. 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.
- g. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement of Order.
- h. 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.
- i. The undersigned on behalf of Emmons-Logan, is authorized to act on behalf of, and bind Emmons-Logan 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 21st day of April, 2020.

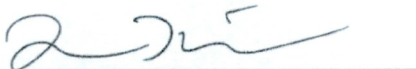
Public Service Commission
Advocacy Staff

By: 

Name: Brian Johnson

Title: Special assistant attorney General for PSC

Dated this 16 day of April, 2020.

By: 

Lane S. Witten

Assistant Vice President

Emmons-Logan Wind, LLC