

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Ruso Wind Partners, LLC
Ruso Wind Project – Ward and McLean Counties
Siting Application

Case No. PU-19-28

AFFIDAVIT OF SERVICE BY REGULAR MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **11th** day of **February 2020**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by first class mail, fully prepaid, securely sealed each containing a photocopy of:

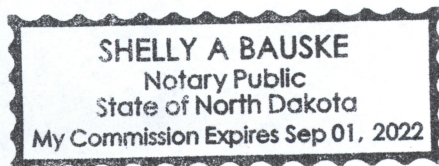
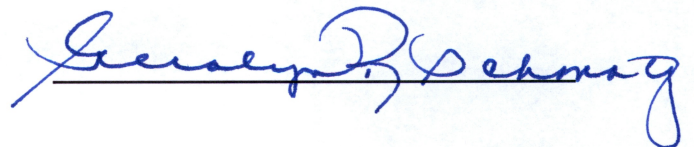
- **Ruso Wind Partners, LLC's Memorandum Regarding N.D.C.C. 49-22-16.4 and N.D.A.C. Ch. 69-06-11**

The envelope was addressed as follows:

Mollie Smith
Fredrikson and Byron, P. A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425

The address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **11th** day of **February 2020**.



(SEAL)



Notary Public

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Ruso Wind Partners, LLC
Ruso Wind Project – Ward & McLean Counties
Siting Application

Case No. PU-19-028

Re: Ruso Wind Partners, LLC's Memorandum Regarding N.D.C.C. 49-22-16.4 and
N.D.A.C. Ch. 69-06-11

On January 30, 2020 Ruso Wind Partners submitted a memorandum in regards to N.D.C.C. 49-22-16.4 and the requirement that a wind project must have light mitigation technology.

The memorandum fails to discuss the issue at hand and refocuses the issue to non-related language in the law and rule. Requiring light mitigating technology be consistent/compliant/approved by the FAA does not give the FAA's determination that light mitigation technology is not approved for a project the ability to supersede North Dakota State Law.

In statutory interpretation, the plain language of the law should be looked at first.

The plain language that Ruso should be discussing is "every wind energy conversion facility for which the commission issued a certificate of site compatibility after June 5, 2016 **must be equipped** with a functioning light-mitigating technology system that complies with the rules adopted by the commission." N.D.C.C. 49-22-16.4(1)

The light-mitigation system must comply with FAA regulations plainly means the light mitigation system must be approved by the FAA. To state that the FAA only approving traditional lighting circumvents the requirement of N.D.C.C. 49-22-16.4 is a far stretch and ignores the plain language of the law that a project **must be equipped** with a functioning light mitigation technology system. . . .

The language ignored by Ruso in the Commission's rule 69-06-11-03 is "**each light mitigation technology system must be installed, operated, and maintained in accordance with the United States Department of Transportation federal aviation administration regulations [14 CRF 1.1. et. Seq] in effect as of July 1, 2018.**" There are light mitigation systems that the FAA approves. However the location that Ruso has chosen for their project does not allow for light mitigation technology to be used. Because of this location and light mitigation not being able to be approved by the FAA, Ruso cannot comply with N.D.C.C. 49-22-16.4 and N.D.A.C. 69-06-11-02(1) and (5), and build this project in this location.

N.D.C.C. 1-02-05. Construction of unambiguous statute. When the wording of a statute is clear and free of all ambiguity, **the letter of it is not to be disregarded under the pretext of pursuing its spirit.**

The plain language of both the law and rule is unambiguous that towers must be equipped with ADLS, and that the ADLS must be installed operated and maintained in accordance with FAA regulations [14 CRF 1.1. et. Seq].

To use statements made during legislative committee hearings is an attempt to disregard

plain language and pursue what might be the perceived spirit of the law.

Statements were made at legislative committee hearings that acknowledge that some existing wind projects might not be able to be fitted with light mitigation technology and that the FAA must approve of any light mitigation technology does not show the legislative intent was to allow future projects not to have light mitigation technology if the FAA does not approve ADLS. Because these things were discussed and the law was written the way it is shows these things were considered and not written into the law. An extension for technical or economic feasibility was written into the law and rule, but only for projects cited prior to June 5, 2016. This fits with the statements made during the committee hearings.

The plain language of the law and rule states that a project must have light mitigation technology installed and in use.

It is my understanding, interpretation, and opinion that if the Commission would approve the Ruso project without requiring that light mitigation it would be issuing an order that would violate North Dakota Century Code and also Administrative Rules that the Commission has adopted.



Brian Johnson
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