



Public Service Commission

State of North Dakota

COMMISSIONERS

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September 28, 2020

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215 South Casade Street, PO Box 496
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NOTICE OF NONCOMPLIANCE

RE: EDF Renewable Development, Inc./Otter Tail Power Co.
Case No. PU-19-144 (See docket # 69)
Transfer Of Site Certificate
Siting Application

The North Dakota Public Service Commission retained Wenck Associates, Inc. (Wenck) as a third-party vendor to provide construction inspection services in Case No. PU-08-932. The Commission's June 26, 2019 Order approved the transfer of Site Certificate Number 23 for the Merricourt Wind Project from EDF Renewable Development, Inc. to Otter Tail Power Company (OTP).

On August 3, 2020, Wenck filed a Construction Inspection Report (Report) regarding the Merricourt Wind Project. The Report can be viewed at https://psc.nd.gov/database/docket_file_list.php?s_dept=PU&s_company_name=EDF+Renewable+Development%2C+Inc.&s_year_case=19&s_seq_num=144&s_doc=69.

Wenck reported the following non-compliances:

1. Access Roads not stripped of topsoil prior to placement of gravel.
2. Multiple sediment control (silt fence) failures and resulting soil erosion from water throughout the project area.
3. Subsoil stockpiles encroaching or laid directly on unstripped topsoil at several locations.
4. Topsoil not appropriately stripped, mixing of topsoil and subsoil in stockpiles (i.e. inadequate segregation), and use of mixed topsoil and subsoil as backfill at turbine site 49.

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5. Use of mixed topsoil and subsoil as subsoil backfill

The reported issues would not be in compliance with provision 15 of the Certification to Order Provisions made part of the Commission's Orders which states:

Company understands and agrees that topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas, roadways, tower locations, and locations of associated facilities must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.

Commission staff notified Otter Tail of the reported non-compliances and OTP filed a response on August 12, 2020.

In response to this Notice of Noncompliance, OTP may provide within 15 days, information to supplement its August 12, 2020 response, may provide additional answers to the reported non-compliances, and provide a written explanation, information, or other materials that may warrant mitigation or elimination of further compliance enforcement action.

You may contact me at 701-328-4077 with any questions concerning this matter.

Best regards,



Patrick Fahn
Director, Public Utilities Division