

September 16, 2019

**VIA FEDERAL EXPRESS**

Mr. Steven Kahl  
Executive Secretary  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480



**RE: Aurora Wind Project, LLC  
345 kV Transmission Line – Williams & Mountrail Counties  
Siting Application  
Case No. PU-18-351**

**Aurora Wind Project, LLC  
Aurora Wind Project – Williams County  
Siting Application  
Case No. PU-18-352**

Dear Mr. Kahl:

In accordance with (1) Certification Provision No. 7 of the North Dakota Public Service Commission's ("Commission") Order issuing a Certificate of Site Compatibility for the Aurora Wind Project, and (2) North Dakota Administrative Code Section 69-09-09-08(1), Aurora Wind Project, LLC hereby files the Parent Company Guarantee.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Mollie M. Smith".

MOLLIE M. SMITH

MMS/67997688  
Enclosure

cc: Jerry Lein (via e-mail, w/o enclosure)  
Jaimee Antognazzi (via e-mail, w/o enclosure)  
Jennifer Dean (via e-mail, w/o enclosure)  
Alex Belonis (via e-mail, w/o enclosure)

1 PU-19-318 Filed 09/16/2019 Pages: 9  
A Construction Financial Assurance – Parent Company Guarantee  
Aurora Wind Project, LLC  
Mollie Smith, Fredrikson & Bryron, P.A.



## ENEL PARENT COMPANY GUARANTEE

This GUARANTEE (the “**Guarantee**”) is given by ENEL S.p.A. (the “**Guarantor**”), a company duly established and existing under the laws of Italy, and having its registered offices in Rome, at Viale Regina Margherita 137, Italy, registered with the Companies’ Register of Rome under No. 00811720580, Tax code No. 00811720580 and VAT No. 00934061003, in favour of the North Dakota Public Service Commission, a constitutional agency established by the State of North Dakota (the “**Beneficiary**”)

### WHEREAS:

- (a) the Guarantor is the ultimate parent company of Aurora Wind Project, LLC, a company duly established under the laws of the State of Delaware (the “**Company**”);
- (b) the Company is developing an up to three hundred (300) MW wind turbine electric generating facility known as the Aurora Wind Project, Certificate of Site Compatibility Number 59 (the “**Project**”). The Guarantor will directly or indirectly benefit from the Project. In accordance with North Dakota Admin. Code tit. 69 §09.09.08 (the “**Code**”), prior to the construction of the Project, the Company is required to provide the Beneficiary with financial assurance equal to five (5%) per cent of the estimated cost of construction of the Project that may be used to decommission the Project in the event it is abandoned prior to operation. (hereinafter referred to as the “**Statutory Requirement**”);
- (c) the Guarantor has agreed to guarantee the Statutory Requirement of the Company to the Beneficiary in the manner hereafter set out and in accordance with the Code.

**NOW THEREFORE**, the Guarantor hereby agrees as follows:

### 1. Scope of Guarantee

- 1.1 Subject to Clause 3 below, the Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiary the due and punctual payment, upon written demand, of any and all amounts due and not paid by the Company to the Beneficiary under the terms of the Statutory Requirement, including interest, charges, expenses or any other amount due up to the Guarantee Maximum Amount (as defined below).

### 2. Guarantee Maximum Amount

- 2.1 The maximum aggregate liability of the Guarantor, according to this Guarantee, will be the amount of USD Nineteen Million, Two Hundred and Fifty Thousand (\$19,250,000/00) (the “**Guarantee Maximum Amount**”) and, beyond that limit, the Guarantor will not have liability of any kind to the Beneficiary hereunder regarding any kind of claim whether in principal, interests, costs, expenses, fees or other sums due.



- 2.2 The Guarantee Maximum Amount will be automatically reduced in proportion to any payment made by the Company to the Beneficiary in accordance with the Statutory Requirement or any payment made by the Guarantor under this Guarantee. The Company shall notify the Beneficiary, with copy to the Guarantor, of the new Guarantee Maximum Amount as soon as such payment is made through a notice in the form set out in Schedule 1 (*Notice of Reduction*).

### 3. Prior Action Required

- 3.1 Prior to making a demand from the Guarantor, the Beneficiary shall first request payment from the Company and if such payment is not made within 10 (ten) Working Days of receipt of such request, the Beneficiary may then demand payment from the Guarantor without further notice to the Company.
- 3.2 The Beneficiary's demand shall be made in writing by way of registered mail (the "**Payment Demand**") and shall state the amount due for payment, and shall be sent together with (i) a specific statement by the Beneficiary that the Beneficiary is calling upon the Guarantor to pay under this Guarantee, (ii) a copy of the request made to the Company under Clause 3.1 above and (iii) a statement that the Company has failed to pay in accordance with the terms of the request under Clause 3.1.
- 3.3 Any payment due by the Guarantor hereunder shall be made within 10 (ten) Working Days of receipt of the Payment Demand, via bank transfer, to the account of the bank account which shall be indicated by the Beneficiary in writing.
- 3.4 The parties specifically intend for this provision to supersede any contrary provisions of ND Cent Code 22-01-10 and -11 and specifically intend that Guarantor shall have no obligations to Beneficiary until it receives all notices required hereunder.

### 4. Termination

- 4.1 This Guarantee shall be valid from the date of its signing and shall automatically expire, regardless of the original executed copy of this Guarantee or the letter of release having been returned or delivered to the Guarantor or not, upon the earlier of the following events (each and individually, the "**Expiration Date**"):

- (i) 30 June 2021;
- (ii) the date on which all the payment obligations of the Company to the Beneficiary in accordance with the Statutory Requirements have been satisfied and discharged in full.

For the avoidance of doubt, it is understood and agreed that the Guarantor shall pay to the Beneficiary any amount due to it in connection with any Payment Demand under the Guarantee which is received by the Guarantor on or before the Expiration Date.

- 4.2 In the event of any liquidation, bankruptcy, insolvency proceeding or similar proceeding against the Company, the Guarantee shall remain in full force and effect, until all guaranteed obligations of the Company shall be entirely and irrevocably discharged in full.

### 5. Return of Guarantee; Letter of Release

- 5.1 Without prejudice to the full, unconditional and irrevocable discharge of the Guarantor at the Expiration Date, on the request of the Guarantor the Beneficiary agrees (i) to return the



Guarantor the original Guarantee, if the original executed Guarantee has been previously delivered to the Beneficiary or (ii) to deliver to the Guarantor a letter of release of the Guarantor from its obligations under this Guarantee, in the form set out in Schedule 2 (*Letter of Release*), in each case at the address below:

Enel S.p.A.  
Viale Regina Margherita, 137  
00198 Rome, Italy  
Finance & Insurance  
To the kind attention of: Mr. Michelangelo Merola

## 6. Governing Law and Jurisdiction

- 6.1 This Guarantee (and any disputes, controversy, proceedings or claims of whatever nature arising out of, or in any way relating to this Guarantee, or any act performed or claimed to be performed hereunder) shall be governed by and shall be construed exclusively in accordance with the law of the State of North Dakota.
- 6.2 Any dispute, controversy or claim of whatever nature arising out of, or in any way relating to this Guarantee, shall be finally settled exclusively by the state courts of North Dakota.

## 7. Miscellaneous

- 7.1 The Guarantor represents that the person executing this Guarantee has been duly empowered to do so by the Guarantor's competent corporate bodies, and that this Guarantee is fully enforceable against it according to its term, subject, as to enforcement, to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or affecting creditors' rights and to any applicable mandatory rule.
- 7.2 For the avoidance of doubt, the Guarantor acknowledges that the Guarantee is in addition to, and is not in any way prejudiced by, any other guarantee or security held now or which might subsequently be held by the Beneficiary.
- 7.3 The Guarantor shall not, except as authorised by the Beneficiary in writing, divulge to any persons, firm, company or other organisation whatsoever any information relating to the Guarantee.
- 7.4 Neither the Guarantor nor the Beneficiary may assign its rights, interests or obligations hereunder to any other person without the prior written consent of the Guarantor or the Beneficiary, as the case may be, and any purported assignment absent such consent is void.
- 7.5 For the purpose of this Guarantee, Working Days means a day (other than a Saturday or Sunday) on which banks are open for general business in Rome and the State of North Dakota, USA.

IN WITNESS whereof this Guarantee was executed the day and year first below written.

Signed by Clara Astri

CA  
on 16/09/2019 11:09:31 C

Signed by Michelangelo Merola

Rome. 16/09/2019

  
on 16/09/2019 12:55:36 CEST

Signed by FABIO CASINELLI

  
on 16/09/2019 13:09:29 CEST

Signed by PIERGIORGIO RI

PR  
on 16/09/2019 10:56:37 C

enel



Schedule 1

[ON COMPANY'S LETTERHEAD]

Notice of Reduction

To: [Beneficiary]

Attn.: Commissioner Kroshus

Copy to: Enel S.p.A.

Finance & Insurance

Viale Regina Margherita, 137

00198 Rome, Italy

to the kind attention of: Michelangelo Merola

(Date), (Place)

RE: Notice of reduction under the Guarantee

Dear Sirs,

We make reference to the guarantee issued by Enel S.p.A. (hereafter, "Enel S.p.A." or the "Guarantor") on [●], as amended from time to time, in favour of the North Dakota Public Commission (hereafter, the "Beneficiary") and in the interest of our company, Aurora Wind Project, LLC (the "Company") for a Guarantee Maximum Amount (as defined therein) of [●] (the "Guarantee") in connection with the statutory requirement set out in North Dakota Admin. Code tit. 69 §09.09.08 (the "Statutory Requirement").

Whereas, *[please insert the relevant situation under (i) or (ii) below]*

the Company has made the following payments in accordance with the Statutory Requirement: *[please insert details of each payment, e.g. date, amount, milestone of the project, reference to clauses of the underlying Statutory Requirement, if possible]* (the "Payment(s) under the Statutory Requirement"); and/or

the Guarantor has made the following payments under the Guarantee: *[please insert details of each payment, e.g. date, amount, reference to demand of payment received from the Beneficiary, reference to clauses of the underlying Statutory Requirement, if possible]* (the "Payment(s) under the Guarantee", and jointly with Payment(s) under the Statutory Requirement, the "Payment(s)").

Considering all the above,



as provided for under clause 2.2 of the Guarantee and in consideration of the [*please insert the relevant payment: e.g. Payment(s) under the Statutory Requirement, Payment(s) under the Guarantee or Payment(s)*], the Guarantee Maximum Amount of the Guarantee shall be deemed decreased from the current EUR [•] (say: EUR [•]/00) to EUR [•] (say: EUR [•]/00) (the "**New Guarantee Maximum Amount**").

Unless you notify us to the contrary in writing within 10 Working Days from the date of receipt of this notice by the Beneficiary through registered mail (the "**Receipt Date**"), the New Guarantee Maximum Amount will be effective from the Receipt Date.

Kind regards,

(date)

(the Company)

(authorized signatory)



Schedule 2

Letter of Release

[ON BENEFICIARY'S LETTERHEAD]

To: ENEL S.p.A.

Finance & Insurance

Viale Regina Margherita, 137

00198 Rome, Italy

*to the kind attention of: Michelangelo Merola*

(Date), (Place)

**Re: Letter of Release of the guarantee issued by Enel S.p.A. in favour of [●] on [●], as amended from time to time.**

Dear Sirs,

We make reference to the guarantee issued by your company, Enel S.p.A. (hereafter, "**Enel S.p.A.**" or the "**Guarantor**") on [●], as amended from time to time, in favour of North Dakota Public Commission (hereafter, the "**Beneficiary**") and in the interest of Aurora Wind Project, LLC (the "**Company**") for a Guarantee Maximum Amount (as defined therein) of [●] (the "**Guarantee**") in connection with the statutory requirement set out in North Dakota Admin. Code tit. 69 §09.09.08 (the "**Statutory Requirement**").

Whereas,

- (i) the Company has fulfilled its obligations under the Statutory Requirement that are covered by the Guarantee; [and/or]
- (ii) the expiry date set forth under the Guarantee has occurred and no Payment Demand has been received by the Guarantor according to the provision of Clause 3 of the Guarantee;
- (iii) the Beneficiary intends, by this letter (hereafter, the "**Letter of Release**"), to confirm the unconditional and irrevocable release of Enel S.p.A. from all its obligations and liability arising out the Guarantee.

Considering all the above,

We, the North Dakota Public Commission, hereby confirm the full, unconditional and irrevocable release of Enel S.p.A. from all its obligations and liability under the Guarantee, starting from the Expiration Date (as defined in the Guarantee).

This Letter of Release (and any disputes, controversy, proceedings or claims of whatever nature arising out of, or in any way relating to this Letter of Release, or any act performed or claimed to be performed hereunder) shall be governed by and shall be construed exclusively in accordance with Italian law.



Any dispute, controversy or claim of whatever nature arising out of, or in any way relating to this Letter of Release, shall be finally settled exclusively by the Court of Rome.

Yours faithfully,

**(the Beneficiary)**

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**(authorized signatory)**