

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

**Badger Wind, LLC  
Wind Energy Facility Lighting Waiver  
Application**

**Case No. PU-\_\_-\_\_**

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**Badger Wind, LLC’s Request for Waiver of Requirement to Install  
Light-Mitigating Technology System**

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**INTRODUCTION**

Badger Wind, LLC (“Badger Wind”) submits this Request for Waiver of Requirement to Install a Light-Mitigating Technology System (“Waiver Request”) for nine (9) of the 92 turbines currently anticipated to be constructed on the Badger Wind Project (“Project”) pursuant to North Dakota Century Code (“NDCC”) 49-22-16.4(2) and North Dakota Administrative Code (“NDAC”) Chapter 69-06-11. The Federal Aviation Administration (“FAA”) approved the use of an aircraft detection lighting system (“ADLS”) on two (2) permanent meteorological towers and 83 of the turbines anticipated to be constructed for the Project, but did not approve the use of an ADLS on the remaining nine (9) turbines<sup>1</sup> and is requiring that the standard synchronized red lights be utilized on those turbines. Since ADLS is the only light-mitigating technology currently approved by the FAA, a waiver is warranted based on technical infeasibility.

**LEGAL STANDARD**

NDCC § 49-22-16.4(2) states that “[b]y December 31, 2019, every wind energy conversion facility for which the [C]ommission issued a certificate of site compatibility after June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules

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<sup>1</sup> The FAA did not approve the use of ADLS on the following nine (9) turbines: T-68B, T-70A, T-80, T-81, T-83, T-84, T-85, T-105, and T-115. These nine (9) turbines are the subject of this Waiver Request.

adopted by the [C]ommission. After public hearing, the [C]ommission may grant a waiver or an extension of time based on technical or economic feasibility considerations.” *See also* NDAC § 69-06-11-02. The content requirements for a request related to light-mitigating technology are specified in NDAC § 69-06-11-02(7).

On November 30, 2022, in Case No. PU-22-086, the Commission issued Certificate of Site Compatibility No. 64 to Badger Wind for the Project. On September 11, 2024, in Case No. PU-24-087, the Commission issued First Amended Certificate of Site Compatibility No. 64 to Badger Wind for the Project. Thus, the Project is subject to the light-mitigating technology requirement set forth in NDCC § 49-22-16.4(2).

### **DISCUSSION**

Badger Wind has been coordinating with the FAA since 2021. In June and September 2024, the FAA approved Determinations of No Hazard (“DNHs”) for all 92 turbine locations currently anticipated to be constructed as part of the Project.<sup>2</sup> The FAA also approved DNHs for the two (2) permanent meteorological towers currently anticipated to be constructed as part of the Project.

In January 2025, Badger Wind submitted its request to the FAA for approval of ADLS for the Project. In February and March 2025, the FAA issued Marking and Lighting Recommendations approving the use of ADLS on two (2) permanent meteorological towers and 83 turbine locations anticipated to be constructed; for the remaining nine (9) turbine locations, the FAA issued Marking and Lighting Recommendations approving the standard synchronized red

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<sup>2</sup> The FAA issued DNHs for 91 of these turbine locations in June 2024 (Aeronautical Study Numbers (“ASNs”) 2024-WTE-825-OE through 2024-WTE-828-OE, 2024-WTE-830-OE through 2024-WTE-854-OE, 2024-WTE-859-OE through 2024-WTE-874-OE, 2024-WTE-876-OE through 2024-WTE-884-OE, 2024-WTE-886-OE through 2024-WTE-907-OE, 2024-WTE-910-OE through 2024-WTE-924-OE). The FAA issued the DNH for the 92nd turbine location in September 2024 (ASN 2024-WTE-6792-OE).

lights but not ADLS. Included as **Attachment A** to this Waiver Request is a figure depicting the 92 turbine locations that are anticipated to be constructed as part of the Project, with the FAA-approved lighting for each turbine identified.

In the Marking and Lighting Recommendations for the nine (9) turbines that are the subject of this Waiver Request, the FAA concluded that “[d]ue to the proximity of the structure to the Wishek Municipal Airport (6L5), the lights for this turbine must not be controlled by the ADLS system. To ensure the safety of aircraft engaged in low-level, agricultural and/or helicopter operations, the structure must remain marked and lighted in accordance with the original determination for this structure.” These Marking and Lighting Recommendations (and the corresponding DNHs) are included as **Attachment B**. Based on consultations with the FAA, the FAA’s decision to not authorize ADLS and instead require standard lighting for these turbines is due to safety concerns regarding the reaction time of the ADLS in relation to airplanes departing from the Wishek Municipal Airport.

Since ADLS is the only light-mitigating technology system approved by the FAA, and the FAA has determined that ADLS cannot be utilized on these nine (9) turbines, a waiver based on technical infeasibility is warranted. This is consistent with the Commission’s decision in Case No. PU-21-375, granting a waiver from the requirement to install a light-mitigating technology system on all 77 turbines in the PrairieWinds ND1 Wind Project based on technical infeasibility due to the Minot Air Force Base’s opposition to use of ADLS on that project, which was anticipated to result in denial of ADLS by the FAA.

Consistent with the Commission’s order in Case No. PU-21-375, Badger Wind commits to reviewing FAA-approved light-mitigating technology systems every three years and reporting the results to the Commission. The Commission would then be able to use the information to

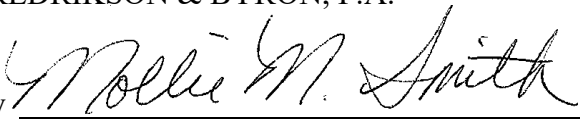
determine if the waiver should continue based on continued technical infeasibility, or if an acceptable light-mitigating technology system could be approved by the FAA and installed on the nine (9) subject turbine locations.

**CONCLUSION**

For the reasons set forth above, Badger Wind respectfully requests that the Commission grant waiver from the requirement to install a functioning light-mitigating technology system on nine (9) of the turbines to be constructed for the Project.

Dated this 16th day of April, 2025.

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By 

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