

July 15, 2025

VIA E-MAIL AND FEDERAL EXPRESS

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

**RE: Badger Wind, LLC
Amend – Badger Wind Project – McIntosh & Logan Counties
Siting Application
Case No. PU-24-087**

Dear Mr. Kahl:

Badger Wind, LLC (“Badger Wind”) provides this letter in response to requests for additional information by the North Dakota Public Service Commission (“Commission”) and Commission Staff at the July 1, 2025 hearing held on Badger Wind’s Request for a Partial Waiver of the Requirement to Install a Light-Mitigating Technology System (“Waiver Request”) for nine (9) turbines to be constructed as part of the Badger Wind Project (“Project”).

As discussed at the hearing, in 2021, the Legislature amended North Dakota Century Code (“NDCC”) 49-22-16.4(2) to explicitly authorize the Commission to grant a waiver or an extension of time from the requirement to install a functioning light-mitigating technology system based on technical or economic feasibility considerations to projects such as this. Badger Wind’s Waiver Request is consistent with this grant of statutory authority.

At the hearing, the Commission and Commission Staff requested that Badger Wind provide the following additional information in writing: (1) summary of the consequences of denying the Waiver Request; and (2) the distances between the Wishek Airport and the nine (9) turbines that are the subject of the Waiver Request, and the additional ten (10) turbines initially denied Aircraft Detection Lighting System (“ADLS”). This information is provided in **Attachments 1 and 2**, respectively.

As discussed at the hearing and detailed in **Attachment 1**, denying the Waiver Request would have a significant, detrimental effect on the Project as well as on the associated economic benefits to landowners and the community. Additionally, as discussed at the hearing and in **Attachment 2**, Badger Wind could not have anticipated the Federal Aviation Administration’s (“FAA”) partial denial of ADLS for the Project, although it will inform siting of future Ørsted Onshore North America, LLC (“Ørsted”) wind projects. Specifically, Ørsted commits to not to site any future turbines within 3.15 nautical miles of a public-use airport in North Dakota.

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Granting the Waiver Request will not set a precedent, as future project developers will have the ability to take the FAA's decision on Badger Wind's lighting plan into consideration in project siting, thereby avoiding the need for a waiver. Given this, and the significant impacts that would result to not just Badger Wind, but to landowners and the community, granting the Waiver Request is appropriate.

Given the status of Project construction, Badger Wind respectfully requests that the Commission issue a decision on the Waiver Request as soon as possible following the July 24, 2025 public hearing. To that end, Badger Wind requests that the Commission hold a special meeting immediately following the conclusion of the public hearing, or as soon as possible thereafter, to issue a decision on the Waiver Request. Badger Wind encloses a proposed Order in support of this request.

An original and six (6) copies of this letter and the above-referenced documents are enclosed. Electronic copies of this letter and the above-referenced documents were filed with the Commission today via e-mail.

If you have any questions, please let me know.

Sincerely,


MOLLIE M. SMITH

MMS/bad/86777419

Enclosures

cc: Rob Frank (via e-mail)
Brian Johnson (via e-mail)
Nick Gebauer (via e-mail)
Andrew Krieger (via e-mail)

Badger Wind, LLC
Badger Wind Project
Docket No. PU-24-87

Attachment 1: Consequences of Denial of the Waiver Request

At the July 1, 2025 hearing held on Badger Wind, LLC's ("Badger Wind") Request for a Partial Waiver of the Requirement to Install a Light-Mitigating Technology System ("Waiver Request") for nine (9) turbines to be constructed as part of the Badger Wind Project ("Project"), Badger Wind described the consequences a denial of the Waiver Request would have on the Project, participating landowners, and state and local taxing authorities. As requested by the North Dakota Public Service Commission ("Commission"), Badger Wind provides the following written summary of the consequences of denying the Waiver Request:

The current Project design has been optimized to ensure maximum efficiency and output. This, in turn, maximizes the value of the Project, and the associated economic benefits to landowners and the community.

If the Waiver Request were denied, the Project would expect to lose a minimum of 19 turbine locations. Thus, even if Badger Wind activated its alternate turbine locations (which are less productive locations), the total number of turbines constructed would be reduced from 92 turbines to 82 turbines. As discussed at the hearing, this reduction would occur because removing the nine (9) turbines that are the subject of the Waiver Request would result in those turbines no longer "shielding" other turbines. Based on discussions with the Federal Aviation Administration ("FAA") regarding the Project's lighting plan, the lack of "shielding" would result in at least an additional 10 turbine locations being impacted. Twelve landowners would lose turbines, with nine (9) losing all their turbines.

Thus, even if Badger Wind activated its alternate turbine locations, ten (10) fewer turbines would be constructed and the overall Project capacity would be reduced by 28 megawatts ("MW").

Due to the reduction in overall capacity, the per-MW cost of construction would increase, and the overall value of the Project would be reduced by approximately \$60 million. The loss of turbines would also have a rippling effect on benefits to landowners, as well as tax revenue for state and local tax authorities. Denying the Waiver Request would eliminate a net of ten (10) turbine payments to landowners, which would equal approximately \$12 million in lost payments to landowners over the life of the Project. Additionally, due to the reduction in output and capacity of the Project, state and local taxing authorities would lose approximately \$4 million in tax revenue over the life of the Project.

As discussed at the hearing, Montana-Dakota Utilities Co. ("MDU") is planning to acquire an interest in the Project assets. Denying the Waiver Request would result in significantly different characteristics than the Project MDU has contracted to purchase.

Badger Wind, LLC
Badger Wind Project
Docket No. PU-24-87

Attachment 2: Distance of Turbines to Wishek Airport

At the July 1, 2025 hearing held on Badger Wind, LLC’s (“Badger Wind”) Request for a Partial Waiver of the Requirement to Install a Light-Mitigating Technology System (“Waiver Request”) for nine (9) turbines to be constructed as part of the Badger Wind Project (“Project”), the North Dakota Public Service Commission (“Commission”) and Commission Staff requested that Badger Wind provide the distance between the Wishek Airport and the nine (9) turbines that are the subject of the Waiver Request, as well as the additional 10 turbines the Federal Aviation Administration (“FAA”) initially determined should utilize standard lighting. The distances are provided below.

Turbine	FAA-Required Lighting	Distance to Wishek Airport
T-80	Standard Lighting	1.94 nautical miles
T-81	Standard Lighting	1.98 nautical miles
T-70-A	Standard Lighting	2.03 nautical miles
T-68B	Standard Lighting	2.36 nautical miles
T-105	Standard Lighting	2.38 nautical miles
T-83	Standard Lighting	2.41 nautical miles
T-115	Standard Lighting	2.48 nautical miles
T-84	Standard Lighting	2.61 nautical miles
T-85	Standard Lighting	2.87 nautical miles
T-71	ADLS (approved after reevaluation)	2.19 nautical miles
T-49	ADLS (approved after reevaluation)	2.58 nautical miles
T-48	ADLS (approved after reevaluation)	2.71 nautical miles
T-54	ADLS (approved after reevaluation)	2.85 nautical miles
T-55	ADLS (approved after reevaluation)	2.95 nautical miles
T-78	ADLS (approved after reevaluation)	2.99 nautical miles
T-65B	ADLS (approved after reevaluation)	3.01 nautical miles
T-73B	ADLS (approved after reevaluation)	3.07 nautical miles
T-72	ADLS (approved after reevaluation)	3.09 nautical miles
T-56	ADLS (approved after reevaluation)	3.15 nautical miles

The FAA’s regulations do not specify a distance a wind project should be from an airport in order to utilize an Aircraft Detection Lighting System (“ADLS”). Rather, the FAA evaluates lighting and marking plans on a case-by-case basis: “Approval of an ADLS will be on a case-by-case basis and may be modified, adjusted, or denied based on proximity of the obstruction or group of obstructions to airports, low-altitude flight routes, military training areas, or other areas of frequent flight activity. It may be appropriate to keep certain obstructions closest to these known activity areas illuminated continuously during the nighttime hours, while the remainder of the group’s obstruction lighting is controlled by the ADLS.”¹

¹ FAA Advisory Circular No. 70/7460-1M, Section 10.2.3.

In hindsight, based on the FAA's denial of ADLS for the Project, we now understand there is the potential that ADLS will not be approved for first-in-line turbines within approximately three (3) nautical miles of an airport. While this information will inform siting of future Ørsted Onshore North America, LLC ("Ørsted") wind projects, it was not information Ørsted or Badger Wind had or could have anticipated. As discussed at the informal hearing, Badger Wind coordinated closely with the FAA, Wishek Airport, and the North Dakota Aeronautics Commission in siting the Project, which resulted in removing five (5) turbines and shifting two (2) turbines to ensure compatibility with airport operations. ADLS was not an issue that was raised. Additionally, Ørsted operates ADLS on multiple wind projects, and this was the first time Ørsted has encountered this type of situation. This is also a novel issue for our consultant, Capital Airspace Group, which has extensive experience with the FAA and use of ADLS on wind projects all over the United States.

Badger Wind understands there may be a concern that granting the Waiver Request sets a precedent. However, future project developers will have the ability to take the FAA's decision on Badger Wind's lighting plan into consideration in project siting, thereby avoiding the need for a waiver. Further, Ørsted commits to not site any future turbine within 3.15 nautical miles of a public-use airport in North Dakota. Given this, and the significant impacts that would result to not just Badger Wind, but to landowners and the community, granting the Waiver Request is appropriate.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Badger Wind, LLC
Amend - Badger Wind Project - Logan & McIntosh
Siting Application**

Case No. PU-24-87

ORDER ON REQUEST FOR PARTIAL WAIVER

_____, 2025

Preliminary Statement

On November 20, 2022, in Case No. PU-22-86, the North Dakota Public Service Commission (Commission) issued Certificate of Site Compatibility No. 64 to Badger Wind, LLC (Badger Wind) for a wind energy conversion facility known as the Badger Wind Project, to be located in Logan and McIntosh Counties, North Dakota (Project).

On September 11, 2024, in Case No. PU-24-87, the Commission issued Amended Certificate of Site Compatibility No. 64 to Badger Wind for the Project.

On April 16, 2025, Badger Wind requested a partial waiver under North Dakota Century Code (NDCC) Section 49-22-16.4 regarding the requirement to install light-mitigating technology on nine (9) of the 92 turbines currently anticipated to be constructed on the Project.

On May 19, 2025, the Commission issued a notice for a public hearing.

On June 13, 2025, the North Dakota Department of Environmental Quality filed comments.

On June 27, 2025, Badger Wind filed its proposed public hearing presentation.

On July 1, 2025, the Commission held a hearing as scheduled.

On July 2, 2025, the Commission issued a notice for a public hearing.

On July 15, 2025, Badger Wind filed information requested during the July 1, 2025 hearing and a proposed Order.

On July __, 2025, Badger Wind filed its updated proposed public hearing presentation.

On July 24, 2025, the Commission held the public hearing as scheduled.

Discussion

1. Badger Wind, LLC is a Delaware limited liability company authorized to do business in the State of North Dakota and is a wholly owned, indirect subsidiary of Ørsted Onshore North America, LLC.

2. The Federal Aviation Administration (FAA) initially denied the use of an aircraft detection lighting system (ADLS) on 19 of the turbines anticipated to be constructed for the Project and required that the standard synchronized red lights be utilized on those turbines. Badger Wind coordinated with the FAA to reduce the number of turbines required to utilize standard lighting to nine (9), thereby maximizing the use of ADLS on the Project.

3. The FAA approved the use of an ADLS on 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 and is requiring that the standard synchronized red lights be utilized on those turbines.

4. ADLS is the only light-mitigating technology currently approved by the FAA.

5. Badger Wind testified that denial of the waiver is expected to result in the loss of at least 10 additional turbine locations, reducing the total number turbines constructed from 92 to 82 and reducing the Project capacity by 28 megawatts. The loss of 19 turbines would reduce turbine payments to landowners, with nine (9) landowners no longer hosting any turbines, and would also reduce the amount of tax revenue generated by the Project.

6. At the hearing, a representative of Badger Wind's parent company, Orsted Onshore North America, LLC, committed to not site any future wind turbines within 3.15 nautical miles of a public-use airport in North Dakota.

7. The Commission finds Badger Wind has established a technical infeasibility to grant a waiver from the requirement to install a light-mitigating technology system on nine (9) turbines based on the FAA's denial of ADLS on those turbines.

Order

The Commission orders:

1. The Commission grants a waiver from the requirement to install a light-mitigating technology system on nine (9) turbines based upon current technical infeasibility, conditioned upon the continued technical infeasibility.

2. Badger Wind shall review FAA-approved light-mitigating technology systems and report the results to the Commission every three years to determine if the waiver should be continued 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) turbines.

PUBLIC SERVICE COMMISSION

Jill Kringstad
Commissioner

Randy Christmann
Chair

Sheri Haugen-Hoffart
Commissioner