



Public Service Commission

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August 14, 2024

Travis Jacobson
Director of Regulatory Affairs
400 N 4th St
Bismarck, North Dakota, 58501

RE: Request for Jurisdictional Determination
Case No. PU-24-308

Mr. Jacobson:

Thank you for your letter on behalf of Montana-Dakota Utilities Co. ("Montana-Dakota") requesting a jurisdictional determination regarding the applicability of Chapter 49-22 of the North Dakota Century Code (N.D.C.C.) to the Cedar Hills Wind facility ("Cedar Hills") located in Bowman County, North Dakota, in light of a planned maintenance project to take place at the facility.

On August 14, 2024, the Public Service Commission discussed your request at the administrative matters portion of its regular commission meeting and asked me to respond to you. The Commission concluded, based on the information that you provided, the activities you have described to do maintenance at Cedar Hills Wind Facility do not qualify as a repower as defined in 49-22 of the N.D.C.C.

As specified in the letter, Cedar Hills is comprised of thirteen 1.5 MW GE wind turbines located on privately owned agricultural land. The facility has a combined generation capability of 19.5 MW. It received its Certificate of Public Convenience and Necessity from the Commission in March 2009 in Case No. PU-08-942 and went into commercial operation on June 6, 2010. Cedar Hills was not subject to the siting rules of the Commission at the time of construction.

MDU asserts work equipment will consist of three cranes, a forklift, and one skid steer. Existing access roads to the turbines will be utilized. No ground disturbance will be needed to widen or alter the access roads – only standard road maintenance will occur as needed. Likewise, the cranes will be utilized on existing gravel pads surrounding each turbine during its operation. The cranes will assist in removing blades and drive train components located inside the nacelle. The existing blades will be inspected and refurbished to like new standards. Maintenance on the existing blades will include repairing leading edge erosion, minor cosmetic damage, and any other necessary repairs found during inspection. Once maintenance and repairs have been

performed on blades, the existing blades will be reinstalled. Uptower work includes replacement of generators and gear boxes. Tower bases and masts are not part of the Project. No work will be performed on them.

The purpose of the Siting Act is to:

“[E]nsure the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the welfare of the citizens of the state by prohibiting . . . energy conversion facilities and transmission facilities from being located, constructed, or operated within this state without a . . . certificate of site compatibility or route permit . . .” See N.D.C.C. § 49-22-02.

Unless otherwise preempted or subject to an exception, an electric energy conversion facility requires a siting certificate and permit. In the case of Cedar Hills Wind facility an exception exists in North Dakota Administrative Code (N.D.A.C.) 69-06-10-01 as it is not designed for or capable of generating more than twenty megawatts of electricity.

N.D.C.C. 49-22-07 pertains to when a certificate of site compatibility or route permit is required. N.D.C.C. 49-22-07(3) states: A wind energy conversion facility that has not been issued a certificate of site compatibility and exceeds five megawatts of electricity may not repower the wind energy conversion facility without first having obtained a certificate of site compatibility. A variance may be granted for impacts to exclusion and avoidance areas resulting from the repowering of existing infrastructure upon a showing of good cause. A requested variance must comply with local land use, zoning, building rules, regulations, and ordinances.

Cedar Hills Wind Facility is greater than 5 megawatts and the activities MDU describes are similar to a repower.

N.D.C.C. 49-22-03(11) defines “Repower” to mean construction activities to completely or partially dismantle and replace turbine equipment at an existing wind energy conversion facility site that result in an increase of the facility's generation output potential or turbine height. The term does not include routine turbine maintenance or routine replacement of malfunctioning turbines or turbine components.

MDU's stated plan does not trigger the repower provision requiring a Certificate of site compatibility or route permit required as the activities MDU describes will not increase the facility's generation output or turbine height.

This determination is based upon the assumption that the activities to the facility are as described and does not set precedent, or apply to other State or Federal laws, regulations, or orders beyond the Siting Act. If there are changes in fact or operation of the facilities that warrant reconsideration, please contact the Public Service Commission

for further guidance. Thank you again for your request. If we can provide further assistance, please do not hesitate to contact us.

Best Regards,

A handwritten signature in black ink, appearing to read 'B. L. Johnson', with a long horizontal line extending to the right.

Brian L. Johnson
Special Assistant Attorney General