

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

Nancy Lange  
Dan Lipschultz  
Matthew Schuerger  
Katie Sieben  
John Tuma

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

**In the Matter of the Application of Blazing  
Star Wind Farm 2, LLC for a Site Permit  
for the up to 200 MW Blazing Star 2 Wind  
Project in Lincoln County, Minnesota**

MPUC Docket No. IP-6985/WS-17-700;  
OAH Docket No. 8-2500-35225

**BLAZING STAR WIND FARM 2, LLC'S  
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S REPORT**

**I. INTRODUCTION.**

Blazing Star Wind Farm 2, LLC (“Blazing Star 2” or “Applicant”) submits the following exceptions to the Administrative Law Judge’s Summary of Public Testimony, Findings of Fact, Conclusions of Law, and Recommendation (“Report”) related to the proposed Blazing Star 2 Wind Project (“Project”). Overall, the Report presents a comprehensive and detailed review of the record in this proceeding. As such, Blazing Star 2 submits only limited comments and exceptions regarding: (1) the Report’s incorporation of comments from the Department of Commerce, Energy Environmental Review and Analysis (“DOC-EERA”); (2) the Report’s discussion and proposed condition related to the use of an Aircraft Detection Lighting System (“ADLS”) for the Project; (3) a minor correction to one of the Report’s findings; and (4) an update on Blazing Star 2’s coordination with the Minnesota Department of Natural Resources (“MDNR”).

**II. DOC-EERA COMMENTS.**

On July 26, 2018, DOC-EERA submitted its Comments and Recommendations to the Administrative Law Judge. Among other things, DOC-EERA proposed revisions to Sections 3.1

of the Draft Site Permit.<sup>1</sup> The proposed revision specifies that “changes in *turbine type* also must be done in such a manner to have comparable overall human and environmental impacts.”<sup>2</sup> The Administrative Law Judge incorporated DOC-EERA’s recommendation into the Report.<sup>3</sup> Blazing Star 2 does not object to this revision to Section 3.1 of the Draft Site Permit.

### **III. ADLS.**

#### **A. Draft Site Permit.**

In its proposed Draft Site Permit, DOC-EERA recommended that the Commission include the following condition, which would require Blazing Star 2 to install ADLS at the Project:

##### **6.1 Aircraft Detection Lighting System**

Lighting installed pursuant to Section 5.2.27 of this permit shall comply with Aircraft Detection Lighting System standards specified in FAA Circular AC 70/7460-IL CHG 1 Chapter 14.

The Commission included this language in the Draft Site Permit it issued on May 11, 2018.

#### **B. Public Hearing Testimony.**

In written testimony in response to the condition proposed by DOC-EERA in the Draft Site Permit, Blazing Star 2 provided additional information regarding ADLS. Among other things, Blazing Star 2 explained that approval from the Federal Aviation Administration (“FAA”) is required to use ADLS at a specific project, that such approval is not a given, and that

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<sup>1</sup> DOC-EERA also proposed revisions to Section 6.1 of the Draft Site Permit regarding ADLS; Blazing Star 2 will address ADLS in Section III of these exceptions.

<sup>2</sup> DOC-EERA Comments and Recommendations at 3 (July 26, 2018) (emphasis in original).

<sup>3</sup> Report at ¶ 52 (“Because Blazing Star 2 has not yet proposed a specific turbine choice for the Project, the EERA recommends that Section 3.1 of the Draft Site Permit be revised so as to maintain Commission and stakeholder expectations as to the overall impacts of the Project, notwithstanding the choice of turbine. . . . The revisions are useful and appropriate.”).

the cost of ADLS for a project may range from \$500,000 to \$2 million and beyond.<sup>4</sup> No other testimony or public comments were submitted regarding ADLS.

**C. Post-Hearing Comments and Proposed Findings.**

1. Blazing Star 2.

In its Post-Hearing Comments, Blazing Star 2 restated its concerns regarding uncertainty of FAA approval and cost with respect to the use of ADLS at the Project.<sup>5</sup> Blazing Star 2 further noted that an ADLS system “typically involves multiple tall radar towers topped by antennae around the perimeter of a wind project, along with accompanying infrastructure, such as an HVAC control house, access roads, fiber optic connections, and power.”<sup>6</sup> To address these concerns, Blazing Star 2 proposed revisions to Section 6.1 of the Draft Site Permit:

**6.1 Aircraft Detection Lighting System**

The Permittee shall conduct a study to determine the feasibility of installing a lighting system at the Project that is consistent with the Aircraft Detection Lighting System standards specified in Federal Aviation Administration (FAA) Circular AC 70/746—IL CHG 1 Chapter 14 (ADLS Feasibility Study). The ADLS Feasibility Study shall include, at a minimum, coordination with the FAA and an analysis of the cost of installing ADLS at the Project.

The Permittee must file the ADLS Feasibility Study with the Commission. The Permittee may not commence construction of wind turbine towers until the Commission reviews the ADLS Feasibility Study and considers whether ADLS should be imposed as a condition of this Permit.

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<sup>4</sup> Ex. 4 at 5 (Smith Direct).

<sup>5</sup> See Blazing Star 2 Post-Hearing Comments at 3-4 (July 19, 2018) (“Even if the FAA approves ADLS for a project, the cost of installing such a system can vary widely, from \$500,000 to \$2 million or more.<sup>5</sup> There are a relatively small number of ADLS providers, and representatives of Blazing Star 2 recently received notice that one of those providers may be in the process of seeking bankruptcy protection. As such, the process of finding a suitable ADLS supplier is currently fluid and can be subject to disruption. This also results in the possibility for substantial variation in how much ADLS may cost from project to project. Although Blazing Star 2 acknowledges that the cost of ADLS may not be the deciding factor in whether it should be implemented, Blazing Star 2 respectfully submits that it is a factor that the Commission likely wants to consider, given that the Project is part of Xcel Energy’s wind generation portfolio.”).

<sup>6</sup> Blazing Star 2 Post-Hearing Comments at 2 (July 19, 2018).

If the ADLS Feasibility Study demonstrates that the FAA will not approve the use of ADLS at the Project, the Permittee shall notify the Commission of such FAA decision. The Permittee may commence construction within 30 days of providing such notice to the Commission without further Commission review under this section.

Under Blazing Star 2's proposed condition, Blazing Star 2 would conduct a feasibility study that would include, among other things, information related to FAA approval and the cost of using ADLS at the Project. After the completion of the feasibility study, the Commission could review the information and make a better-informed decision regarding whether the use of ADLS at the Project should be required. Because the feasibility study would, by necessity, include information regarding additional structure(s) that may be required for the use of ADLS at the Project, the Commission would also have an opportunity to review the types and location(s) of ADLS infrastructure in the Project area, as well as any resulting changes in Project layout and/or environmental impacts that would be caused by the use of ADLS.

## 2. DOC-EERA.

In its post-hearing comments, DOC-EERA also proposed revisions to Section 6.1 of the Draft Site Permit, as follows:

### **6.1 Obstruction Marking and Lighting**

Lighting installed pursuant to Section 5.2.27 of this permit shall comply with Aircraft Detection Lighting System standards specified in FAA Circular AC 70/7460-IL CHG 1 Chapter 14. Permittee may install an FAA approved lighting system without ADLS if the Permittee demonstrates that, despite its reasonable efforts to secure FAA approval for an ADLS, one of the following conditions exists:

- 1) The FAA denies the Permittee's application for an ADLS system, or
- 2) Permittee is unable to secure FAA approval in a timely manner.

If either of these two conditions occur, the permittee's reasonable efforts to secure FAA approval of the ADLS must be described

and filed with the Commission 14 days before the pre-construction meeting.

**D. Report's Recommendation.**

The Report contains a detailed analysis of ADLS based on the record, including a discussion of the revised conditions proposed by both Blazing Star 2 and DOC-EERA.<sup>7</sup> The Report recommends a revised version of Blazing Star 2's proposed condition, as follows:

**6.1 Aircraft Detection Lighting System**

The Permittee shall conduct a study to determine the feasibility of installing a lighting system at the Project that is consistent with the Aircraft Detection Lighting System standards specified in Federal Aviation Administration (FAA) Circular AC 70/746—IL CHG 1 Chapter 14 (ADLS Feasibility Study). The ADLS Feasibility Study shall include, at a minimum:

- (a) detail as to the models and in-service dates of a sample of comparable ADL systems;
- (b) an assessment of the risk of a nighttime aerial collision with a Project turbine;
- (c) an analysis of the likely cost of installing an ADLS at the Project;
- (d) detail as to the presentment of one or more potential ADL systems for the Project, by the Permittee, to officials of the FAA; and,
- (e) responses, if any, from the FAA to the Permittee's presentation.

The Permittee must file the ADLS Feasibility Study with the Commission. The Permittee may not commence construction of wind turbine towers until the Commission reviews the ADLS Feasibility Study and considers whether ADLS should be imposed as a condition of this Permit.

The Permittee may commence construction no sooner than **90** days after providing such notice to the Commission without further Commission review under this section.

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<sup>7</sup> See Report at ¶¶ 205-16.

**E. Blazing Star 2's Exceptions.**

Blazing Star 2 appreciates the Administrative Law Judge's analysis of this issue. However, Blazing Star 2 continues to believe that its proposed revision to Section 6.1 best addresses the uncertainties and competing interests with respect to the use of ADLS at the Project. More specifically, the Report includes a discussion of ADLS and safety that appears misplaced for at least two reasons. First, the purpose of using ADLS at a wind project is to minimize aesthetic impacts – not decrease the risk of an aerial collision. Second, the FAA is the agency responsible for evaluating safety risks with respect to ADLS; it does so through its review of ADLS vendors generally and the use of ADLS at specific projects. Blazing Star 2 proposes the following revisions to the Report to reflect these issues:

214. Importantly, it is not clear from this record how much ~~the risk of an aerial collision~~ potential aesthetic impacts will be reduced if Blazing Star 2 deploys an ADLS, but other, nearby turbines do not include such a system.

215. In the view of the Administrative Law Judge, neither party offers a sufficient solution to balancing the costs and ~~safety risks~~ aesthetic benefits. EERA, for its part, will not directly bear of any of the burdens of higher project costs and thus is freer to emphasize the ~~safety~~ aesthetic benefits of an ADLS. Blazing Star 2, uncertain as to how a new regulatory requirement might impact the cost ~~figures it has shared with investors and others of the Project~~, does not want a significant, unanticipated cost ~~upsetting its investment-backed expectations, especially where the Project may be purchased by Xcel Energy, a rate-regulated utility~~. In such a circumstance, the Commission should decide how much added ~~protection~~ aesthetic benefit should be purchased, when it should be introduced, and at what price.

The Report's revisions to Section 6.1 of the Draft Site Permit also reflect the misunderstanding that the purpose of ADLS is to provide safety benefits.<sup>8</sup> Specifically, the

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<sup>8</sup> Report at ¶ 216.

Report's revised Section 6.1 would require a feasibility study to include "an assessment of the risk of a nighttime aerial collision with a Project turbine."<sup>9</sup> As noted previously, the FAA – not Blazing Star 2 or the Commission – is tasked with assessing the safety of ADLS generally and at a specific site. To the extent the FAA approves ADLS for the Project, presumably a safety assessment would be part of the FAA's analysis. Accordingly, Blazing Star 2 continues to believe that its proposed revisions to Section 6.1 of the Draft Site Permit best balance the interests at stake and should be adopted by the Commission.

#### **IV. OTHER MATTERS.**

##### **A. Correction.**

Blazing Star 2 has reviewed the Report's findings in detail and notes that a correction is needed to Paragraph 114, as follows:

114. Geronimo ~~operates~~ developed two other renewable energy projects ~~that it developed~~ in Southwest Minnesota: –The Prairie Rose Wind Farm and Odell Wind Farm. Geronimo earlier held ownership interests in these projects, but ~~today, only serves as the operator~~ no longer owns these developments.

##### **B. MDNR.**

Since the filing of MDNR's July 9, 2018, letter in this docket, Blazing Star 2 has continued to correspond and coordinate with MDNR regarding the Project. Blazing Star 2 will continue such coordination going forward and agrees with DOC-EERA that "the flexibility afforded by the inclusion of 'alternate' turbine locations in the site layouts, combined with other minimization measures, will be adequate to allow MNDNR's concerns about avoidance of native

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<sup>9</sup> *Id.*

prairie and risk to avian and bat species to be addressed as the Avian and Bat Protection Plan (ABPP) and native prairie protection plan processes progress.”<sup>10</sup>

**V. CONCLUSION.**

The record for these proceedings supports granting Blazing Star 2 a Site Permit for the Project. As such, Blazing Star 2 respectfully requests that the Commission adopt the Report with the revisions noted herein and grant the Site Permit for the Project.

Dated: August 21, 2018

Respectfully submitted,

*/s/ Haley L. Waller Pitts*

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<sup>10</sup> DOC-EERA Comments and Recommendations at 2 (July 26, 2018).