



October 28, 2022

VIA E-FILING

Mr. Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, MN 55101-2147

**Re: In the Matter of the Application of Rose Creek Wind, LLC for a LWECS Site Permit for the up to 17.4 MW Rose Creek Wind Project in Mower County, Minnesota
MPUC Docket No. IP-7065/WS-21-643
OAH Docket No. 23-2500-38341**

Dear Mr. Seuffert:

Rose Creek Wind, LLC (“Rose Creek” or “Applicant”) appreciates the thorough analysis and recommendations contained in the Administrative Law Judge’s (“ALJ”) Findings of Fact, Conclusions of Law, and Recommendations (“ALJ Report”) dated October 13, 2022 in the above-referenced matter. Overall, the ALJ Report presents a comprehensive and detailed review of the record in this proceeding. As such, Rose Creek submits only limited comments and exceptions focused on the ALJ’s proposed findings and the permit condition related to Federal Aviation Administration (“FAA”) lighting, specifically installation of an Aircraft Detection Lighting System (“ADLS”).

In accordance with Minnesota Rules, part 7829.0500, and Minn. Stat. Ch. 13, Rose Creek has designated certain data contained in this letter as NONPUBLIC DATA because it contains commercially sensitive trade secret information related to the estimated cost of the ADLS, which, if released, would have a detrimental effect on Rose Creek by providing confidential pricing terms to potential competitors, commercial parties and others. This data is valuable information not otherwise readily ascertainable and from which these persons would obtain economic value. Rose Creek takes measures to keep this information confidential by not publicly sharing the information with persons other than potential contracting partners. Given the need to include nonpublic information, Rose Creek prepared and is e-filing both NONPUBLIC and public versions of this exceptions filing.

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Mr. Will Seuffert
October 28, 2022
Page 2

Federal Aviation Administration Lighting.

Rose Creek is requesting an exemption under Minn. Stat. § 216F.084, subd. 4(b)(2) and revisions to Section 5.3.28 of the Draft Site Permit relating to FAA lighting because the cost of the ADLS would impose a significant financial burden on Rose Creek.

This is the first docket in which the Commission has been asked to grant an exemption under the newly enacted provisions in Minn. Stat. § 216F.084. Rose Creek respectfully submits that the facts in this docket present precisely the circumstances in which an exemption is warranted, and that the Commission's siting experience provides additional context supporting the exception.

At up to 17.4 MW in size, Rose Creek is among the smallest wind projects the Commission permits. As discussed in the record, the costs of ADLS include a number of fixed capital components – most notably the cost of the radar tower and equipment - as well as ongoing operating costs to maintain the system.¹ The cost of the radar tower and equipment is spread over far fewer megawatt hours of produced wind energy in a 17.4 MW project than it would be for a project of a larger size.

As the ALJ Report correctly noted, the cost of the ADLS would be approximately two to three percent of the total development costs of the Project and would likely require an increase in the price of purchased power from the Project.² The increased costs evidenced in Mr. Gokhan Andi's testimony equate to an increase of approximately [NONPUBLIC DATA HAS BEEN EXCISED] per MWh in the purchased power price. In a competitive energy market, particularly a regulated market like Minnesota with strong regulatory interest in reducing ratepayer impacts, this increase is significant.

Additionally, as the testimony of Mr. Andi states, the installation of the ADLS tower must be sited on land subject to a voluntary easement and be located at a location that supports proper functioning of the ADLS. Rose Creek does not currently have appropriate land rights to site the radar facility³ and will have to make a monetary offering to acquire those land rights. This only adds on to the total development costs of the Project.

In addition to the financial burden, Rose Creek also submitted information regarding the marginal benefits installing ADLS on the six proposed towers would have on the night sky in the project area. Rose Creek believes that this is relevant information the Commission can and should consider when deciding whether to grant this exemption request.

Notably, the ALJ's proposed finding No. 255 is inconsistent with the record in this regard. The ALJ emphasizes the taller height of the repowered turbines, but the increase in tower height does not trigger the ADLS requirement as suggested by the finding. The increase height has a limited

¹ Ex. RCW-101 at 7-8.

² Report - Findings of Fact, Conclusions of Law, And Recommendation (Oct. 13, 2022) (eDocket No. [202210-189745-01](#)) at 48.

³ Ex. RCW-101 at 7-8.

Mr. Will Seuffert
 October 28, 2022
 Page 3

impact on the visual impacts to the night sky, when the larger rotor diameters would not be visible. Rose Creek submits that the more relevant information pertains to the reduced total number of FAA lights that will be installed (from 11 to six) under the repowered project. In the existing night sky, there are already hundreds of FAA lights visible from this location, making the relative benefits of ADLS marginal at best in improving the visual impacts on the night sky.⁴

Rose Creek proposes the following revisions to Finding 255 in the ALJ Report:

255. Rose Creek's argument for an exemption has merit because the cost of acquiring and installing ADLS will be two to three percent of the total development costs of the Project,⁵ not including the cost of acquiring land rights to site the radar facility and operating the equipment over the life of the Project. ~~ignores that the new turbines in the Project have a larger rotor diameter than the existing Rose Wind turbines which necessitates larger setback requirements and new locations within the Project area.²⁷⁶ Rose Creek has demonstrated that equipping light-mitigating technology imposes a significant financial burden on the permittee.⁶ Thus, an exemption under Minn. Stat. § 216F.084, subd. 4(b)(2) should be granted. The Project's turbines, at approximately 500 ft in height from ground to blade tip, are significantly taller than the 200 ft height minimum that triggers the ADLS requirement.²⁷⁷ The Rose Wind Facility does not have ADLS installed because the requirement was newly effective as of June 2021. Rose Wind Facility and the other existing wind farms that Rose Creek references as not having ADLS do not have ADLS because it was not required at the time those facilities were built. Lastly, the estimated costs related to the ADLS requirement is two to three percent of the Project costs.²⁷⁸~~

256. Rose Creek has ~~not~~ provided sufficient information for the Commission to grant an exemption under Minn. Stat. § 216F.084, subd. 4(b)(2). ~~Though the Applicant has provided evidence of the cost of the ALDS system relative to the Project's total development costs, it has not demonstrated that the cost would impose a financial burden on the permittee.~~ Accordingly, the Commission adopts the following Administrative Law Judge recommends no revisions to Section 5.3.28 of the Draft Site Permit relating to Federal Aviation Administration Lighting:

5.3.28 Federal Aviation Administration Lighting

⁴ Ex. RCW-101 at 8.

⁵ Ex. RCW-101 at 7.

⁶ Ex. RCEW-101 at 6.

Mr. Will Seuffert
October 28, 2022
Page 4

Towers shall be marked as required by the FAA. There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment. ~~The Permittee shall install and employ an FAA-approved lighting mitigation system, such as an ADLS, light intensity dimming solution (“LIDS”), or other FAA-approved mitigation method. The Permittee shall describe the lighting mitigation system used for the project in its site plan.~~

Rose Creek proposes that the Commission reinstate the language from Finding 102 related to the other existing wind turbines:

102. The existing Rose Wind Facility is located within the Project Site and consists of 11 turbines with red-blinking lights. These will be decommissioned prior to the commercial operation of the proposed Project. There are 11 windfarms and 385 wind turbines (including the 11 existing Rose Wind turbines) within 10 miles of the Project Boundary of various heights, rotor diameters, and lighting mechanisms. MET towers associated with these wind facilities may be present on the landscape with individual lighting systems.⁷

Conclusion.

Rose Creek respectfully requests that the Commission adopt the ALJ Report with the revisions noted herein, granting an exemption from ADLS requirements pursuant to Minn. Stat. § 216F.084, subd. 4, and issue the Site Permit for the Rose Creek Project.

A copy of this filing is also being served upon the persons on the Official Service Lists of record. Please let me know if you have any questions regarding this filing.

Sincerely,

/s/ Christina K. Brusven

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⁷ Ex. RCW-103 at 24 (SP Application).

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Wind Project in Mower County,
Minnesota**

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CERTIFICATE OF SERVICE

Malinda M. Maier certifies that on the 28th day of October 2022, on behalf of Rose Creek Wind, LLC, she e-filed true and correct copies of the following documents:

1. Exceptions to ALJ Report (Public and NONPUBLIC); and
2. Certificate of Service.

with the Minnesota Public Utilities Commission via eDockets (<https://efiling.web.commerce.state.mn.us>). Said documents were also served as designated on the Official Service List on file with the Minnesota Public Utilities Commission and as attached hereto.

Dated this 28th day of October 2022

/s/ Malinda M. Maier
Fredrikson & Byron, P.A.
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Minneapolis, MN 55402-1425

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Gokhan	Andi	andig@conedceb.com	Consolidated Edison Clean Energy Businesses.	4301 W 57th ST STE 131 Sioux Falls, SD 57108	Electronic Service	Yes	OFF_SL_21-643_Official CC Service List
Vernon	Archibald	archibaldv@conedceb.com	Rose Creek Wind, LLC	100 Summit Lake Dr Ste 210 Valhalla, NY 10595	Electronic Service	No	OFF_SL_21-643_Official CC Service List
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	Yes	OFF_SL_21-643_Official CC Service List
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-643_Official CC Service List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_21-643_Official CC Service List
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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-643_Official CC Service List

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