



Public Service Commission State of North Dakota

COMMISSIONERS

Brian Kroshus
Julie Fedorchak
Randy Christmann60

600 East Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480
Web: www.psc.nd.gov
Phone: 701-328-2400
ND Toll Free; 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

July 14, 2020

Casey Furey
Crowley Fleck PLLP
PO Box 2798
Bismarck, ND 58502-2798

NOTICE OF NONCOMPLIANCE

Re: Project: FPL Energy North Dakota Wind II, LLC
North Dakota Wind II Energy Center
Case No.: PU-10-106

North Dakota Administrative Rule (N.D.A.C.) 69-09-09-03 states:
Abandonment and useful life - Certificate of operation.

1. After construction of a facility is complete, the owner shall annually file a certificate of operation with the commission for that facility by April first of each year.

A facility is defined by 69-09-09-01(3):

3. "Commercial wind energy conversion facility" means a wind energy conversion facility with one or more wind turbines that has a total nameplate generating capacity equal to or greater than five hundred kilowatts.

An owner is defined by 69-09-09-01(9):

9. "Owner" means a person who holds a certificate of site compatibility pursuant to North Dakota Century Code chapter 49-22, or if no certificate was issued, a person who owns a facility or part of a facility.

An annual certification is defined by 69-09-09-01(2):

2. "Certificate of operation" means an affidavit executed by the owner certifying to the commission a facility's:
 - a. Nameplate generating capacity;
 - b. Annual capacity factor;
 - c. Annual megawatt hour output; and
 - d. Monthly megawatt hour output.

20 **PU-10-106** Filed: 7/14/2020 Pages: 2
Notice of Noncompliance

Our records indicate that you are in noncompliance with 69-09-09-03 by not filing with the North Dakota Public Service Commission a Certificate of operation for calendar year 2019 for the Project listed above.

N.D.C.C. 49-22-21(3) states:

3. Any person who willfully engages in any of the following conduct is subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day the violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
- a. Begins construction of an electric energy conversion facility or an electric transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains an electric energy conversion facility or an electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
 - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
 - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter. The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

In addition to the civil penalty the Commission may impose, the Site Certificate for the Project could be suspended or revoked for operation in violation of N.D.A.C.

Staff requests a Certificate of operation for calendar year 2019 for the Project be filed with the Public Service Commission 30 days after the receipt of this Notice of Noncompliance to avoid further action due to noncompliance.

Please feel free to contact me with any questions.

Best regards,



Patrick Fahn
Director, Public Utilities Division