



# Public Service Commission

## State of North Dakota

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### NOTICE OF NONCOMPLIANCE

RE: Case No. PU-17-284  
Foxtail Wind, LLC – Foxtail Wind Energy Center  
Aircraft Detection Lighting System

On January 2, 2020, Foxtail Wind, LLC provided a letter updating the North Dakota Public Service Commission Staff (Staff) on the status of implementation of the light-mitigating technology system at the Foxtail Wind Energy Center. Staff concluded that, while the light-mitigating technology system is near to completion, it was not functioning in its full capacity at that time. Therefore, Foxtail Wind, LLC is not in compliance with North Dakota law.

On January 2, 2020 the Commission held a work session on the matter and the Commissioners directed Staff to provide the following Notice of Noncompliance:

North Dakota Century Code (“N.D.C.C”) 49-22-16.4(2) and North Dakota Administrative Code (N.D.A.C.) 69-06-11-02(1) state that, by December 31, 2019, every wind energy conversion facility for which the Public Service Commission issued a certificate of site compatibility after June 5, 2016, must be equipped with a functioning light mitigating technology. N.D.C.C. 49-22-16.4 and N.D.A.C. 69-06-11 do not allow for an extension of this deadline. N.D.A.C. 69-06-11-02(5) also provides that written notice to the commission is required upon implementation of light-mitigating technology.

N.D.C.C. 49-22-21(3)(b-c) sets forth the following penalty provisions for non-compliance:

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:

...

129 PU-17-284 Filed: 1/3/2020 Pages: 2  
Notice of Noncompliance

- 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.

In addition to the civil penalty, the Commission may suspend or revoke the Certificate of Site Compatibility issued for the Foxtail Wind Energy Center for operation in violation of N.D.C.C., N.D.A.C, or provisions of the Commission's Order issuing the Certificate.

Please feel free to contact me with any questions. `

Best regards,



Patrick Fahn  
Director, Public Utilities Division