

**BEFORE THE NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Foxtail Wind, LLC
Foxtail Wind Energy Center – Dickey County
Siting Application**

Case No. PU-17-284

Preliminary Statement

This Consent Agreement is entered into by and between Northern States Power Company (“NSP”), doing business as Xcel Energy, and the Public Service Commission Advocacy Staff (“Staff”) (together, the “Parties”) for resolution of Staff’s January 3, 2020 Notice of Noncompliance issued to NSP in Case No. PU-17-284 (the “Matter”) concerning the Foxtail Wind, LLC – Foxtail Wind Energy Center Aircraft Detection Lighting System (“ADLS”).

ADLS Statute

North Dakota Century Code (“N.D.C.C.”) Section 49-22-16.4(2) requires that “by December 31, 2019, every wind energy conversion facility for which the commission issued a certificate of site compatibility after June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules adopted by the commission.” See *also* North Dakota Administrative Code (“N.D.A.C.”) Section 69-06-11-02(1). Neither N.D.C.C. 49-22-16.4(2) nor N.D.A.C. 69-06-11-02(1) includes a specific mechanism for obtaining an extension of time for the December 31, 2019, deadline.

Pursuant to N.D.C.C. Section 49-22-21, “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:

- 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.”

Certificate of Site Compatibility - Foxtail Wind Energy Center

On January 31, 2018, in Case No. PU-17-284, the Commission issued Certificate of Site Compatibility Number 53 to Foxtail Wind, LLC designating a site for the construction, operation and maintenance of a 150 MW Foxtail Wind Energy Center and associated facilities (“Foxtail”) in Dickey County, North Dakota. On February 27, 2018, in Case No. PU-17-387, the Commission issued Certificate of Public Convenience and Necessity Number 5916 to NSP authorizing it to acquire, construct, and operate Foxtail in Dickey County, North Dakota. On May 4, 2018, in Case No. PU-18-144, NSP filed an application to transfer Certificate of Site Compatibility Number 53 from Foxtail Wind, LLC to NSP. On May 23, 2018, NSP filed a revised application to transfer Certificate of Site Compatibility Number 53. On December 6, 2018 the Commission approved the transfer of Certificate of Site Compatibility Number 53 to NSP.

ADLS Installation at Foxtail Energy Center

On January 2, 2020, NSP sent a letter to Staff stating that Foxtail went into commercial operation on December 31, 2019, and acknowledging that Foxtail ADLS was not yet operational, and requested an extension of the statutory deadline to complete installation of the ADLS. On January 3, 2020, Staff sent NSP a Notice of Noncompliance,

noting that NSP had violated N.D.C.C. 49-22-16.4(2) and N.D.A.C. 69-06-11-02(1) by failing to have a functioning ADLS at Foxtail by December 31, 2019. The Notice of Noncompliance noted that NSP may be subject to civil penalty pursuant to N.D.C.C. 49-22-21, and that, in addition, the Commission may suspend or revoke the Certificate of Site Compatibility issued for Foxtail for operation in violation of N.D.C.C., N.D.A.C., or provisions of the Commission's Order issuing the Certificate.

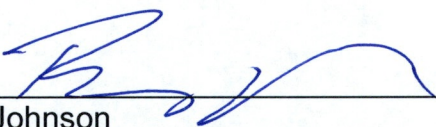
Terms of Consent Agreement

NSP and Staff engaged in good faith settlement discussions regarding this Matter resulting in this Consent Agreement. Having agreed that settlement of this Matter will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this Matter, the Staff and NSP agree on the following terms, subject to the approval and acceptance of the Commission:

1. Staff and NSP agree to settle the Matter on the following terms:
 - a. NSP acknowledges that Foxtail did not have a functioning ADLS by December 31, 2019, and therefore did not comply with N.D.C.C. 49-22-16.4(2) and N.D.A.C. 69-06-11-02(1).
 - b. Subject to the provisions of this Agreement, NSP agrees to a civil penalty, payable to the North Dakota Public Service Commission, of \$10,000 for not complying with the ADLS statute.
2. There are no covenants, promises, undertakings, or understandings related to the resolution of the Matter other than those specifically set forth in this Agreement and Order.

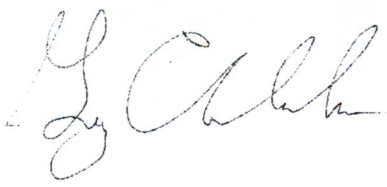
3. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
4. The undersigned on behalf of NSP is authorized to act on behalf of NSP and bind NSP for purposes of this Consent Agreement, and knows and fully understands the content and effect of this Consent Agreement.

Dated this 11th day of June, 2020



Brian Johnson
Special Assistant Attorney General Bar ID 07397
North Dakota Public Service Commission

Dated this 10th day of June, 2020



Greg P. Chamberlain
Regional Vice President, Regulatory & Govt. Affairs
Northern States Power Co. - MN