

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

**Case No. PU-17-284**

**ORDER ON CONSENT AGREEMENT**

**July 8, 2020**

**Preliminary Statement**

On January 3, 2020, Commission Advocacy Staff (Staff) sent a Notice of Noncompliance to Xcel Energy, a trade name owned by Northern States Power Company (NSP), alleging a violation by NSP of North Dakota Century Code (N.D.C.C.) section 49-22-16.4(2) and North Dakota Administrative Code (N.D.A.C.) section 69-06-11-02(1) for failure to equip its Foxtail Wind Energy Center with a functioning light-mitigating technology system by December 31, 2019.

On January 9, 2020, NSP filed a response to the January 3, 2020 Notice of Noncompliance.

On April 8, 2020, NSP filed a letter notifying the Commission regarding the status of the aircraft detection lighting system (ADLS) at its Foxtail Energy Center.

On June 11, 2020, a Consent Agreement between Staff and NSP was filed for the resolution of the allegations of the Notice of Noncompliance.

**Discussion**

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 of a 150 MW Foxtail Wind Energy Center and associated facilities in Dickey County, North Dakota.

On May 23, 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. Northern States Power Company is a foreign business corporation with principal address of 414 Nicollet Mall, Minneapolis, MN 55401.

Subsequent to issuance of the Commission's Orders, N.D.C.C. section 49-22-16.4 was enacted and became effective on August 1, 2017. Section 49-22-16.4 established a new compliance deadline, requiring that facilities permitted by the Commission after June 5, 2016, must be equipped with a functioning light-mitigating technology system by December 31, 2019.

On July 1, 2018, N.D.A.C. § 69-06-11-02(1) became effective. Section 69-06-11-02(1) requires that facilities permitted by the Commission after June 5, 2016, be equipped with a functioning light-mitigating technology in compliance with this chapter by December 31, 2019.

Staff alleges a violation by NSP of N.D.C.C. section 49-22-16.4(2) and N.D.A.C. section 69-06-11-02(1) for failure to equip the Foxtail Wind Energy Center with a functioning light-mitigating technology system by December 31, 2019.

NSP's January 9, 2020 letter notified the Commission that the Foxtail Wind Energy Center began commercial operation on December 31, 2019, and that at least 2-3 weeks of additional time was needed to complete the installation and testing of the ADLS.

NSP's April 8, 2020 letter notified the Commission that the ADLS at its Foxtail Energy Center became fully operational on April 7, 2020.

NSP and Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

NSP agrees to a civil penalty of \$10,000 payable to the North Dakota Public Service Commission for not complying with the ADLS statute.

Having considered this matter, the Commission finds the Consent Agreement filed on June 11, 2020, is reasonable and acceptable. Therefore, the Commission issues the following:

### **Order**

The Commission Orders:

1. The Consent Agreement of NSP and Staff, filed June 11, 2020, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. NSP is assessed a civil penalty of \$10,000.

3. NSP shall remit \$10,000 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

**PUBLIC SERVICE COMMISSION**



Julie Fedorchak  
Commissioner



Brian Kroshus  
Chairman



Randy Christmann  
Commissioner

**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 11<sup>th</sup> day of June, 2020



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

Dated this 10<sup>th</sup> day of June, 2020



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