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November 29, 2017

North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

Dear Commissioners,

Foxtail Wind, LLC is providing this letter to respond to comments submitted by the North Dakota Game and Fish Department (NDGFD) in a letter to the Commission dated November 6, 2017. Below, we identify each NDGFD comment in ***bold italics*** and provide a response for the consideration of the Commission in plain text directly following the comment. In addition to responses to the NDGFD comment letter, we have included responses to NDGFD comments on the Project Wildlife Conservation Strategy dated September 19, 2017. Foxtail hopes that the additional information provided in these responses will assist the Commission in the review.

Response to North Dakota Game and Fish Department (NDGFD) comment letter to PSC (6 November 2017):

- 1. On September 19th, 2017, the Department contacted NextEra Energy Resources, LLC about their Wildlife Conservation Strategy (WCS). The Department expressed a number of concerns on the WCS as presented (see enclosed email) but is unaware if any have been addressed to date.***

Foxtail Wind, LLC has been coordinating with NDGFD throughout development of the Project. The contact referred to by NDGFD was initiated by Foxtail to voluntarily solicit comments from NDGFD on the draft WCS initially shared with both NDGFD and the USFWS in August 2017. It was the most recent in a series of contacts regarding the Foxtail Project and its predecessor, the Rough Rider Wind Project, dating back to 2008. These coordination efforts are summarized in the bulleted items below and more fully described in Section 1.4 of the WCS.

- 3 December 2008. Inquiry letter from Tetra Tech, Inc. to NDGFD

- 15 January 2015. Inquiry letter from Tetra Tech, Inc. to NDGFD
- 4 March 2015. Letter request for Tier 1/Tier 2 information from Tetra Tech, Inc. to NDGFD
- 24 March 2015. Response letter from NDGFD to Tetra Tech, Inc.
- 10 August 2016. Email request for additional biological resource information from Tetra Tech, Inc. to NDGFD
- 12 August 2016. Response email from NDGFD to Tetra Tech, Inc.
- 23 August 2016. Data sharing agreement between Tetra Tech, Inc. and NDGFD
- 25 August 2016. Transmittal of raptor nest information to Tetra Tech, Inc. from NDGFD
- 27 March 2017. Request for updated biological resource information from Tetra Tech, Inc. to NDGFD
- 26 April 2017. Transmittal of updated information to Tetra Tech, Inc. from NDGFD
- 14 September 2017. Conference call with NDGFD, USFWS, DNV GL, and Foxtail Wind, LLC discuss agency comments on draft WCS
- 19 September 2017. Second conference call with NDGFD, USFWS, DNV GL, and Foxtail Wind, LLC discuss agency comments on draft WCS
- 19 September 2017. Email transmittal of NDGFD comments on draft WCS to Foxtail Wind, LLC

2. A considerable portion of the project area is composed of this vital ecosystem and the Department has urged NextEra address the loss of unbroken prairie, and the services it provides to an array of North Dakota wildlife, due to the project. The Department suggested NextEra develop an offset package for the permanent impact of roads and turbine pads that are to be constructed within unbroken prairie habitat ~ 160 acres and any CRP-SAFE tracts (a program designed to maintain or increase populations of high value or high priority wildlife species). The Department recommended that this offset package include indirect effects of the fragmentation of the unbroken prairie habitat of up to 100 meters from new or improved roads and 200 meters of turbine sites.

As documented in the Project WCS, Sections 3.2.3, 5.1, 5.4, 6.1.3, and 7.4, Foxtail has undertaken a series of desktop studies and field surveys to identify, delineate, and avoid native prairie. It is unclear from the letter whether NDGFD is using "unbroken" to denote prairie soils that have not been tilled or to denote contiguous, connected parcels of native prairie. Foxtail, LLC is not aware of any data source containing geospatial records of untilled prairie in North Dakota, and has therefore

relied on plant community analyses to identify and delineate contiguous parcels of native prairie parcels.

To address agency comments, the updated WCS contains an analysis of native prairie based on suitable Dakota skipper habitat and contiguous native grasslands \geq 160 acres (derived from habitat needs of Sprague's pipit). The analysis of native grasslands in the Project Area was documented during the 2014 Native Prairie Survey. These areas were then classified as Excellent/Likely, Good/Possible, or Poor/Unlikely habitat for the Dakota skipper based on grazing intensity and presence of key plant species. Excellent and Good quality habitats exhibited signs of light and moderate grazing, respectively. The 2015 Dakota skipper habitat delineation surveys focused on areas of Excellent and Good quality skipper habitats in which Project infrastructure was proposed at the time. The areas identified as Good or Excellent Dakota skipper habitat were additionally used in an analysis that Foxtail developed in coordination with the USFWS. These areas of skipper habitat were cross-tabulated with contiguous grasslands \geq 160 acres to identify areas of high quality native prairie that were unfragmented. USFWS criteria for Foxtail believes that high quality native prairie represents the best habitat in the Project Area for grassland birds based on the available data.

Dr. Wells referenced these results in her testimony at the hearing and verbally described the results summarized in Section 6.1.1.4 of the WCS from August that indicated there were 7.40 acres of permanent impacts to high quality native prairie and 34.36 acres of impacts to all native prairie quality types. Since the preparation of the WCS shared with the agencies in August, additional analysis was completed as part of the November revision of the WCS filed with this letter.

Based on conversations with the agencies since sharing the August version of the WCS, and to respond to agency comments, Foxtail has refined the analysis resulting in an update to the information now reflected in Table 8 of the WCS (Section 5.1.2) revised in November. The refined analysis indicates that permanent impacts will occur to 7.40 acres of high quality native prairie and 38.86 acres of all native prairie quality types; the latter number is a revision since Dr. Wells' testimony to address agency comments. The breakdown of habitat surrounding turbines in the final array consists of 5 turbines in high quality native prairie, 42 turbines in native prairie identified as poor/unlikely habitat for Dakota skippers, 3 turbines in tame (previously tilled by agriculture with soil disturbance and replanted) grasslands, and 25 turbines in cropland. The 3 alternate turbine locations are all in cropland.

The breakdown of number of turbines in the different habitats differs from that in Table 8 of the Draft WCS originally reviewed by NDGFD and the USFWS in August in two ways: (1) Table 8 only references the Dakota skipper habitat categories, and does not incorporate the definition of high quality native prairie developed in coordination with USFWS, and (2) micro siting conducted since the inputs to the Draft WCS were developed led to changes in the location of turbines with respect to the Dakota skipper habitat categories. As a result, the number of turbines in Good/Possible Dakota skipper habitat (and also high quality native prairie) decreased from 23 to 5 and the number of turbines in Poor/Unlikely Dakota skipper habitat increased from 30 to 42.

Foxtail has worked extensively with local landowners in identifying CRP lands within the leased parcels. Foxtail was not previously aware of the existence of CRP-SAFE lands on any of the leased parcels based on review of the written contents of the CRP contracts for those lands; however, Foxtail has since conferred with FSA and determined that turbines 38 and 44 are located on such lands.

The NDGFD comment letter for the WCS was the first mention to Foxtail of the NDGFD recommended offset distances, and these distances therefore came as a surprise to Foxtail given the extensive collaboration to date. Foxtail has already committed to developing a voluntary native prairie offset package based on direct impacts to high quality native prairie in close coordination with USFWS; however, the NDGFD recommended buffer distances for calculating indirect impacts are so large and provided at too late of stage in Project development without significant impacts on commercial schedule and cost to be feasible. On this point, Foxtail appreciates acknowledgement in the USFWS letter that although mitigation efforts may result from the voluntary collaborative for other projects in early stage development after a comprehensive approach is available and has been shared with the wind industry to set expectations, Foxtail as an individual project should not be viewed as a case study for implementation at this time.

Response to North Dakota Game and Fish Department (NDGFD) email commenting on Project WCS PSC (September 19, 2017):

- 1. There are 115 Species of Conservation Priority (SCP) identified in the 2015 North Dakota State Wildlife Action Plan (SWAP). The WCS states there are 100, which is the number from the 2005 plan.**

The WCS had indeed used the 2005 SWAP to identify SCP. Sections 2.5, 4.2, and 5.2.2 of the WCS have been revised to incorporate the number and identity of SCP contained in the 2015 SWAP.

2. ***In Section 2.5 State Protection, only the SCP are mentioned. Note that per North Dakota Century Code 20.1-04, all game birds, harmless wild birds, and their nests are protected by state law.***

Section 2.5 of the WCS has been revised to incorporate this information.

3. ***For assessing risk to Whooping Crane, also utilize the Pearse et. al 2015 map of Whooping Crane stopover site use intensity:***
<https://www.sciencebase.gov/catalog/item/56253ce5e4b0fb9a11dd3d2b>.
Pearse, A.T., Brandt, D.A., Harrell, W.C., Metzger, K.L., Baasch, D.M., and Hefley, T.J., 2015, Whooping crane stopover site use intensity within the Great Plains: U.S. Geological Survey Open-File Report 2015–1166, 12 p.,
<http://dx.doi.org/10.3133/ofr20151166>.

Foxtail notes that the Pearse et al. (2015) stopover use intensity study was used (and cited) in the development of the WCS and in the development of the 2017 Whooping Crane Assessment prepared by Tetra Tech, Inc. Foxtail also notes that the map referenced by the NDGFD comments shows Dickey County to be in a portion of the migration corridor not used by the whooping cranes in the Pearse et al. study, further supporting the conclusion that there is a low likelihood of use of the Project Area by the species. Section 5.2.2 of the WCS has been revised to incorporate conclusions of Pearse et al. (2015) regarding whooping crane use intensity as compared to wind farm locations.

4. ***The WSC indicates the project area does not fall within a SWAP focus area but this is untrue. The project falls within the Missouri Coteau Breaks Focus Area.***
<https://gishubdata.nd.gov/dataset/game-and-fish-action-plan-focus-areas>.

Foxtail reviewed GIS information for the SWAP focus areas and determined that the Project does indeed fall mostly within the Missouri Coteau Breaks Focus Area. Sections 4.1 and 4.2 of the WCS have therefore been revised to reflect this information. Foxtail notes that development is not precluded from SWAP Focus Areas; rather they are intended to identify broad landscapes that contain habitats and communities of conservation interest.

5. ***The nearest USGS BBS route is not the Edgeley route. The Danzig route (#64006) is closer and has much similar habitat to the project area, including prairie and wetlands. The Edgeley route is nearly all cropland. The Edgeley route starts 14 miles from project and ends 35 miles away (middle of route approximately 28 miles from project center); Danzig starts 26 miles from project and ends 6 miles from project (middle of route approximately 18 miles from project center). We recommend revising Table 4 with Danzig route information.***

Foxtail originally screened BBS routes by searching for those with the nearest starting points to the Project Area; this resulted in selection of the Edgeley Route. Foxtail agrees with NDGFD that the Danzig Route has an end point closer to the Project than the Edgeley Route starting point, and includes a habitat mix more like that within the Project. Section 4.2.1 of the WCS has therefore been revised to incorporate analysis of the Danzig Route. Foxtail notes that the change in BBS information resulted in only minor changes to the list of breeding bird species in Section 4.2.1, and did not materially alter the conclusions of the analysis.

6. ***Throughout the WCS, much emphasis is placed on Sprague's Pipit and Baird's Sparrow, but not Chestnut-collared Longspur. The Chestnut-collared Longspur is another grassland obligate species that federal and state agencies have prioritized. The Chestnut-collared Longspur has experienced steeper population declines (-85% from 1974-2014, Rosenberg et. al 2016) than Sprague's Pipit (-75%) and Baird's Sparrow (-71%). At the rate of decline, it is estimated that in 17 years the population will be half of what it is now in the Prairie Pothole landscape. Chestnut-collareds prefer moderately to heavily grazed native prairie. Rosenberg, K.V., J. A. Kennedy, R. Dettmers, R. P. Ford, D. Reynolds, J.D. Alexander, C. J. Beardmore, P. J. Blancher, R. E. Bogart, G. S. Butcher, A. F. Camfield, A. Couturier, D. W. Demarest, W. E. Easton, J.J. Giocomo, R.H. Keller, A. E. Mini, A. O. Panjabi, D. N. Pashley, T. D. Rich, J. M. Ruth, H. Stabins, J. Stanton, T. Will. 2016. Partners in Flight Landbird Conservation Plan: 2016 Revision for Canada and Continental United States. Partners in Flight Science Committee. 119 pages.***

Foxtail discussed this comment with NDGFD during the September 19, 2017 conference call and explained to NDGFD that Sprague's pipit and Baird's sparrow were used in the WCS to identify habitat characteristics important to all grassland birds. These species were chosen because of their conservation status and the fact that habitat needs for the species were well understood and documented. The intent

of the analysis based on these two species was not to exclude other species, but rather to identify a reasonably inclusive set of habitat needs in the analysis for all grassland birds that are sensitive to the area of habitat available. It was our understanding based on the discussion during the conference call that NDGFD agreed with our approach to add the chestnut-collared longspur to the group of species used to identify important habitat for grassland birds and, subsequently, Sections 4.1.1, 4.2.1, 5.1.2, 5.2.2, 6.1.1.3, and 6.1.1.4 of the WCS were revised to incorporate information regarding the chestnut-collared longspur and to clarify the use of these species to identify valuable habitat for all grassland bird species.

- 7. *The spring avian survey period (17-March to 11 June) was insufficient for detecting breeding birds. The key time frame for detecting breeding grassland birds is May 1 – July 15. For example, Sprague's Pipits have a bimodal display period, with two general time frames of late April – mid May and again from mid-June – early August.***

Foxtail notes that criticism of the 2015 avian survey methodology is useful for designing future bird surveys in North Dakota, but is provided at too late a stage of development to reasonably be applied to the Foxtail Project. The timing of avian surveys for Foxtail was designed in accordance with industry best practices commonly conducted to address the research questions contained in the USFWS voluntary Wind Energy Guidelines (WEGs). Foxtail is not currently aware of any state guidance, but has been actively participating in the voluntary industry-led collaborative to help develop such an approach. The avian survey techniques are designed based on the research question to be answered as specified in the USFWS WEGs. The primary research questions for pre-construction surveys at proposed wind farms are: (1) what is the species composition of the bird community at the Project and (2) what are the average rates of use of these species. In the case of a species like Sprague's pipit, the most likely result of surveying for a period that misses the second mode (peak) of display timing would not be missing the existence the species on the site (question 1) or the average rates of use of the site (question 2). Rather, the shorter survey period would most likely result in the under counting of individuals, which does not directly impact either of the two research questions.

- 8. *The NDGF has not yet received the GIS data for eagle and other raptor nests discovered during the raptor surveys.***

Foxtail's raptor nest-survey contractor, Tetra Tech, Inc. corrected this oversight by transmitting the raptor nest survey data from 2017 to NDGFD in November 2017.

9. *The baseline habitat assessment separates grassland/herbaceous and hay/pasture (land cover), but does not specify which of each category is unbroken.*

It is unclear from the comment whether “unbroken” refers to soil that has never been tilled or to native prairie habitat that is contiguous (connected) parcels of land. Foxtail is not aware of any data for North Dakota that facilitates the identification of soils that have never been tilled; furthermore, this can be approximated by field surveys, but tilling history often remains uncertain. Therefore, Foxtail has identified contiguous parcels of native prairie habitat by performing a series of desktop and field studies and delineations, culminating in a 2017 micro siting exercise to place turbines outside of native prairie. The grassland/herbaceous and hay/pasture land cover types are derived from the National Land Cover Database, which does not break down the categories any further. In order to identify native prairie, Foxtail therefore used these categories to screen land cover in the Project Area for areas that needed additional field survey; these field surveys were conducted in 2014-15 and 2017, resulting in the identification of native prairie within the Project Area. Foxtail further analyzed the native prairie in the Project Area to identify areas of high quality habitat for wildlife by delineating suitable habitat for the Dakota Skipper and for area-sensitive grassland birds, such as Sprague’s pipit. The areas identified in this way were avoided to the extent practicable. These overlapping efforts are summarized in Sections 3.2.2, 3.2.3, 4.1.1, 4.2.1, 5.1.1 to 5.2.2, 5.4, 6.1.1, 6.1.3, 6.2.1, 7.1, and 7.4 of the WCS.

10. *The habitat assessment solely focused on two ESA Lepidoptera species. However, this assessment is meant to be a proactive, rather than reactive, approach and SWAP species of concern should be considered when evaluating the presence of native habitat.*

This characterization of the analysis of habitat is inaccurate. It is, of course, important to avoid and minimize impacts to the ESA-listed Lepidoptera (butterfly) species. Foxtail went beyond this analysis, however, and focused additional efforts on identifying habitat of high quality for grassland bird species in coordination with USFWS. These overlapping efforts are summarized in Sections 3.2.2, 3.2.3, 4.1.1, 4.2.1, 5.1.1 -5.2.2, 5.4, 6.1.1, 6.1.3, 6.2.1, 7.1, and 7.4 of the WCS.

11. Moving forward, it will be important to know exactly how much unbroken prairie is going to be impacted by development. Subjective statements such as “high quality prairie could be avoided” don’t help quantify the actual loss of the resources.

The methods and results for identifying habitat that Foptail describes as high quality native prairie are described in detail in the WCS, Sections 3.2.2, 3.2.3, 4.1.1, 4.2.1, 5.1.1 - 5.2.2, 5.4, 6.1.1., 6.1.3, 6.2.1, 7.1, and 7.4. Foptail, in coordination with USFWS, chose explicit criteria based on habitat suitability for Dakota skipper and grassland birds to screen areas that appeared to be native prairie for their value to wildlife. As a result, Foptail believes this approach incorporates best scientific knowledge to defining the representation of high quality prairie that is specific and avoids reference to any undefined or subjective approach. These criteria included plant community composition and the size of contiguous (“unbroken”) parcels of native prairie. Use of the term “high quality prairie” refers to native prairie identified following these objective and scientific methods.

12. As for the topic of quality, it is important to remember that the prairie changes both seasonally and annually. Climate, natural disturbance, and grazing pressure all impact the physical and biological aspects of the prairie, in both negative and positive ways. A prairie is not a stagnant ecosystem and a single assessment of its ‘quality’ tells us little to nothing of its true value to wildlife.

Foptail agrees with the intent of this comment and notes that, for exactly this reason, it performed assessments of native prairie habitat in a 2008 Critical Issues Analysis, a 2008 Native Prairie Assessment and Field Survey, a 2009 Expansion Area Native Prairie Survey, a 2015 Native Prairie Survey, a 2015 Dakota Skipper and Poweshiek Skipperling Habitat Suitability Report based on field delineation, and a 2017 mMicro siting and Grassland Delineation. Foptail’s conclusions regarding the quality of prairie habitat in the Project Area is therefore based on analysis over 4 survey years separated by variable amounts of intervening years that Foptail believes incorporate important year-to-year variation due to climate and disturbance.

13. The offsets mentioned only included re-seeding temporary disturbance with native species and replacing any tree or shrub lost due to development according to PSC; however, there is no mention of any type of offset for the permanent loss of the resources.

The initial draft of the WCS in August did not contain a description of the native prairie offsetting mitigation approach that Foxtail is developing in coordination with USFWS. Section 7.4 of the November WCS has been revised to describe the approach being taken and to make clear Foxtail's commitment to provide offsetting mitigation. In addition, Foxtail has verbally discussed our intent to provide a voluntary native prairie offset with NDGFD subsequent to the issuance of the letter and WCS comments. As referenced in our response to USFWS comments, Foxtail has had at least two separate calls with USFWS to work out the details of this voluntary offset approach.

- 14. Two of the turbine locations, #38 and #44, appear to be sited on CRP-SAFE tracts. This CRP program is designed to maintain or increase populations of high-value or high priority wildlife species. We recommend seeking alternative sites on non-SAFE sites but not on unbroken grassland.**

Foxtail has worked extensively with local landowners in identifying CRP lands within the leased parcels. Although Foxtail was aware of the presence of CRP contracts on the parcels proposed to host these two turbines, Foxtail was not previously aware of the existence of CRP-SAFE contracts in the vicinity; however, Foxtail has since conferred with FSA and determined that turbines 38 and 44 are located on such lands. The owners of these tracts, however, prefer adding turbines to the land over maintaining the easement contracts. Foxtail is committed to balancing private landowner desires and environmental protection, so will assist with any requirements to remove portions of these parcels from the CRP program with FSA and has already factored these native prairie impacts into the calculation of permanent impacts for the voluntary offset.

- 15. The WCS states that: "Much of the land in the Project area is used for cattle ranching and agriculture and is thus already disturbed or fragmented." At face value this comment suggests that grazing causes fragmentation of the landscape. If that is the intended message, we do not agree. We suggest this statement be rewritten or fleshed out to explain its intent.**

Foxtail discussed this comment with NDGFD during the September 19, 2017 conference call, and clarified that the intent was to identify excessive disturbance in the form of mowing or overgrazing can be detrimental to grassland habitat quality for wildlife. However, disturbance by grazing and fire was historically important to maintaining native prairie, and moderate mowing or grazing can serve the same function. It was our understanding based on the discussion that there was agreement

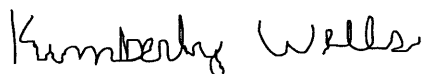
between Foxtail and NDGFD on this interpretation, and it has now been implemented in Sections 6.1.1.4, and 6.2.2.1 of the WCS

16. Figure 8 is the most important map in the document. This map illustrates the vast amount of contiguous, unbroken grassland in the project area. It is nearly an exact match to where we have spatially modeled remaining unbroken grassland. We recommend an offset package be developed for the permanent impact of roads and turbine pads that will be constructed within "Native Prairie Habitat \geq 160 acres" and any CRP-SAFE tracts. The offset package should include indirect effects of the fragmentation of the native prairie habitat of up to 100 meters from new or improved roads and 200 meters of turbine site.

Foxtail was surprised to receive information regarding NDGFD's recommended distances for infrastructure for calculating offsets for the first time in written comments following the September 19, 2017 conference call. Although the Project infrastructure layout has already been finalized including incorporation of private landowner preferences, Foxtail is working in coordination with USFWS to develop an offsetting mitigation approach that will provide for preservation of areas of native prairie proportional to the Project's impacts identified in Section 7.4 of the WCS. The approach used to calculate direct impacts to be offset incorporates Dakota skipper habitat as well as contiguous native prairie habitat \geq 160 acres, as recommended in the NDGFD comment. As discussed above, Foxtail has been actively collaborating with the USFWS to develop the voluntary offset.

Foxtail Wind, LLC thanks the Commission for the opportunity to respond to the NDGFD comments.

Sincerely,



Kimberly Wells, Ph.D.