

December 21, 2017



**Hand Delivered**

Mr. Darrell Nitschke  
ND Public Service Commission  
600 Boulevard Ave, Suite 1300  
Bismarck, ND 58503

Re: Foxtail Wind, PU-17-284: Proposed findings of fact, conclusions of law, and Order

Dear Mr. Nitschke:

Consistent with the Honorable Timothy Dawson's directives at the November 20, 2017 hearing and the December 14, 2017 extension of time, enclosed are Foxtail Wind's proposed Findings of Fact, Conclusions of Law, and Order ("Proposed Findings"). The Proposed Findings reflect and incorporate the most-recent developments and collaboration between Foxtail Wind and the North Dakota Game and Fish Department and U.S. Fish and Wildlife Service concerning efforts to mitigate the Project's effects on habitat and wildlife. These developments are reflected in Late Filed Exhibits 29-31 (as supplemented on December 20, 2017).

Thank you for your attention to this filing. Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

Stinson Leonard Street LLP



Aaron K. Friess

Enclosures

cc: Judge Timothy Dawson (via email)  
Mr. Brian Schmidt (via email)

94 PU-17-284 Filed 12/21/2017 Pages: 14  
Proposed Findings of Fact, Conclusions of Law and Order  
Foxtail Wind, LLC  
Aaron Friess, StinsonLeonardStreet,LLP

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

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

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

December \_\_, 2017

**Appearances**

Commissioners Randy Christmann, Julie Fedorchak, and Brian Kroshus

Brian M. Meloy and Aaron K. Friess, Stinson Leonard Street, 811 E. Interstate Ave.  
Bismarck, ND 58503 on behalf of Applicant, Foxtail Wind, LLC

Brian D. Schmidt, Special Assistant Attorney General, North Dakota Public Service  
Commission.

Timothy J. Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911  
North 14<sup>th</sup> Street–Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On July 17, 2017, Foxtail Wind, LLC (Foxtail Wind) filed an Application for a Certificate of Site Compatibility for a wind energy conversion facility known as the Foxtail Wind Energy Center (Wind Project) to be located in Dickey County, North Dakota.

On October 4, 2017, the North Dakota Public Service Commission (Commission) deemed Foxtail's Application in Case No. PU-17-284 complete and scheduled a public hearing for November 30, 2017 at 11:00 a.m. Central Time, at the Fireside Restaurant, 415 1<sup>st</sup> Ave. N, Ellendale, North Dakota 58436. The Notice identified the following issues to be considered:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On October 18, 2017, the Public Service Commission staff filed a Notice of Filing and Notice of Hearing correcting the hearing date to November 20, 2017, at 11:00 a.m. Central Time at the at the Fireside Restaurant, 415 1<sup>st</sup> Ave. N, Ellendale, North Dakota 58436.

On November 13, 2017, Foxtail filed its Certification relating to Order Provisions and Tree and Shrub Mitigation for PU-17-284.

The public hearing was held as scheduled on November 20, 2017. Having allowed all interested persons an opportunity to be heard, and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

### **Findings of Fact**

1. The Applicant, Foxtail Wind is a Delaware limited liability company headquartered in Juno Beach, Florida and is authorized to do business in the State of North Dakota as evidenced by the corporate papers filed in Case No. PU-17-328.
2. Foxtail Wind proposes to construct a wind energy conversion facility within approximately 20,029 acres of land in western Dickey County, North Dakota. The Project is referred to as the Foxtail Wind Energy Center.
3. The Wind Project area depicted in Hearing Exhibit No. 16 identifies the site for the Wind Project.
4. Foxtail Wind evaluated a study area and ultimately selected the proposed site for the Wind Project based on a number of factors, including: the identified need, the quality of the wind source, on-site electrical infrastructure for interconnection to the grid, landowner support, community input, agency coordination, compatibility with existing land use and environmental features, compliance with the Commission's siting criteria, compliance with Dickey County requirements, and economic considerations.
5. North Dakota Century Code § 49-22-16(4) provides that a site shall not be designated that violates the rules of any state agency. Compliance with an agency's rules shall be presumed if the agency fails to present its position with respect to the proposed facility at the public hearing. Foxtail Wind coordinated with and received feedback from the following federal and state departments, agencies, and entities:
  - a. Federal – United States Fish & Wildlife Service (USFWS); U.S. Army Corps of Engineers (USACE);
  - b. State – North Dakota Department of Transportation; State Historical Society of North Dakota; North Dakota Game & Fish Department (NDGFD); North Dakota State Historic Preservation Office; North Dakota Department of Health; North Dakota State Water Commission.

6. Agency consultations and comments are noted in the application, exhibits, and testimony presented at the public hearing. Foxtail has undertaken an extensive amount of cooperation and collaboration with USFWS and with NDGFD regarding the potential effects of the Project and seeking to avoid or minimize negative impacts to the Project Area. No state or federal agency or local government entity has indicated that they oppose the issuance of a Certificate of Site Compatibility for the Project.
7. North Dakota Century Code § 49-22-16 provides that no energy conversion facility site shall be designated if it violates any local land use, zoning or building rules, regulations, or ordinances. Dickey County delegates zoning matters to the local townships. Grand Valley, Whitestone, and German townships within the Project area do not require conditional use permits for the Project. Any conditional use permit required by Spring Valley township will be obtained prior to construction of the Project.
8. All easements and other land rights necessary to build and operate the Project and associated facilities (collection substation, operation and maintenance (O&M) facility and switchyard) have been obtained, except for the Department of North Dakota Trust Lands. Foxtail Wind and North Dakota Trust Lands are currently in negotiations, and plan to execute the agreement once the Certificate of Site Compatibility is issued as evidenced in Hearing Exhibit 2.
9. Foxtail will interconnect the Project with the Montana-Dakota Utilities Co. (MDU) transmission system at the MDU Ellendale-Tatanka 230 kV transmission line at a new substation.
10. Foxtail has entered into a Purchase and Sale Agreement with Northern States Power Company dba Xcel Energy (Xcel) pursuant to which Foxtail Wind and Xcel will seek Commission approval to transfer the Certificate of Site Compatibility (Certificate) to Xcel. Xcel currently intends to construct the Project in two phases between 2018 and 2019.
11. Upon the transfer of the Certificate, all obligations assumed by Foxtail will be assumed by Xcel.

### **Project Design**

12. The Project will consist of up to 75 turbines, using Vestas V-116 and Vestas V-110 turbine generators, and will have a name-plate generating capacity of up to 150 megawatts (MW). Both turbine models are 2 MW turbines.
13. The turbine towers will be conical tubular steel with a hub height of up to 262 feet. The V-116 turbines will measure 453 feet from the base of the tower to the tip of the upright blade with a rotor diameter of 381 feet, and the V-110 turbines will measure 443 feet with a rotor diameter of 361 feet. The portion of the foundation that is above ground is 15 to 16 feet wide at the base of the tower. Each turbine will be grounded and shielded to prevent against lightning strike.

14. At the base of each turbine, a step-transformer will be installed to step up the voltage to 34.5 kV. The electricity from these transformers will be run through an underground collection system consisting of various sized buried cables generally located on private property or public right-of-way. Collection lines will be buried 48 inches deep and will not affect farming operations. At the point where the access and public roads meet, the collection system will continue as underground lines. All collection system cables will terminate at an on-site collector substation, which includes a transformer to step up the voltage from 34.5 kV to 230 kV for interconnection to the transmission grid.
15. The turbines have Supervisory Control and Data Acquisition (SCADA) communications technology to allow control and monitoring of the wind farm. The SCADA communications system permits automatic, independent operation and remote supervision allowing the simultaneous control of many turbines.
16. Associated facilities to be constructed within the Project area include access roads, electrical collection systems, an operation and maintenance building, a collection substation, and a meteorological tower.
17. The Project substation will include power transformers to step up the voltage from 34.5 kV to 230 kV and provide the necessary protection and control for interconnection to the transmission grid. The collection substation and switchyard will be collocated along 71st Ave SE, south of 91st St SE to connect the proposed Project to the MDU 230 kV Ellendale-Tatanka overhead transmission line. An O&M building will be constructed nearby on 91st St SE, just east of 72nd Ave SE.
18. The Project will be constructed pursuant to the National Electric Safety Code requirements and FAA-approved radar-activated ADLS or an equivalent lighting-mitigation system will be installed.

### **Siting Criteria**

19. North Dakota Administrative Code Chapter 69-06-08 sets forth criteria to guide the Commission in evaluating the suitability of a proposed energy conversion facility site. These criteria are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

### **Exclusion Areas**

20. An Exclusion Area is a geographical area that is generally excluded in the consideration of a site for an energy conversion facility. The area of exclusion may also include a buffer zone of a reasonable width where appropriate to protect the integrity of the area.
21. With the exception of prime and unique farm land, an energy conversion facility must not be sited within an Exclusion Area. If the Commission finds that the prime and unique farm land will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural production, then the exclusion shall not apply.

22. Only 642 acres of the Project area, or 3.2%, consists of prime farmland. Prime farmland will be avoided to the extent practicable, and permanent impacts to prime farm land are estimated to be 2.8 acres, or less than one percent of the total Project area. The Commission finds that the amount of prime farm land which may be disturbed by this energy conversion facility is of such small acreage as to be of negligible impact on agricultural production.
23. Only 25.5 percent or 5,104 acres of the Project Area consists of soils of statewide importance. Soils of statewide importance will be avoided to the extent practicable, and permanent impacts to soils of statewide importance are estimated at 25.5 acres, which is less than one percent of the Project Area. The Commission finds that the amount of soils of statewide importance that may be permanently disturbed by this energy conversion facility to be of negligible impact.

### **Avoidance Areas**

24. An energy conversion facility must not be sited within an Avoidance Area unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternate sites.
25. With respect to Avoidance Areas, historical resources are present within the Project Area, but the Project will be sited to avoid direct impacts to historical resource sites. Additionally, construction will proceed in a manner designed to protect and leave undisturbed the identified historical resources.
26. The North Dakota Geological Survey landslide mapping program indicates a minimal amount of landslide deposits occur within the proposed Project area, which was confirmed in their October 9, 2017 letter submitted to the Commission and which is Hearing Exhibit 17. The Project will be sited to avoid areas known to be geologically unstable through the use of geotechnical testing prior to construction of any permanent infrastructure.
27. Wetland determinations were conducted for the Project in November 2016, April 2017, June and July 2017, and August 2017 as shown in the Project's Wetlands Delineation Report (Hearing Exhibit 3). Wetlands are present within the Project Area, but permanent impacts will be less than 0.1 acres at each feature and under the threshold to quality for Nationwide Permits under the Clean Water Act.
28. Some trees and shrubs are located within the Project Area, but the Project will be sited to minimize tree removal to the extent practicable. Tree or shrub removal and replacement will be coordinated with landowners and conducted in accordance with the Commission's tree and shrub mitigation specifications.

29. Two locations exist within the Project Area where due to operation of the Project, the sound levels within 100 feet of an inhabited residence may exceed 50 decibels. Foxtail has obtained written waivers from each of these residents, both of whom are participating in the Project as demonstrated in Late Filed Exhibit 27. Due to the operation of the facility, the number of hours of shadow flicker each year may exceed 30 hours for one of these two residents. Foxtail's waiver from this participating landowner also addresses shadow flicker.

### **Site Selection and Policy Criteria**

30. The proposed Project will not have a significant adverse impact on the Selection Criteria set forth in North Dakota Administrative Code § 69-06-08-01(5). Foxtail Wind has committed to maximizing the benefits of the proposed Project so far as possible as to meet the policy criteria set forth in North Dakota Administrative Code § 69-06-08-01(6).
31. The Project and the associated facilities are expected to result in permanent disturbance and occupation of up to approximately 98 acres of land. No landowners will be displaced. Foxtail Wind will continue to work with landowners to minimize land use disruptions from the Project. No impacts to irrigation or quality of the agricultural land are anticipated.
32. During construction, the Projects may result in a temporary increase in traffic on county and township roads. The increase in traffic during construction is not expected to be at a volume that will disrupt residents or travel in the Project Area. During operation, no adverse effects to transportation facilities or networks are anticipated.
33. No significant adverse impact is foreseen on the ability of the affected areas to provide community services, such as housing, health care, schools, police, and fire protection, water and sewer, solid waste management, transportation, or public safety. The Project is expected to be of economic benefit to the affected area through the creation of construction and operation and maintenance jobs; easement payments to landowners; state and local tax revenue; and local expenditures for equipment, fuel, operating supplies, products and services.
34. A Determination of No Hazard will ultimately be obtained from the FAA on the final Project layout. No other impacts to any radio signals, television signals, satellite or phone signals, GPS signals, air defense radar, homeland security radar, or other weather surveillance radar are anticipated.
35. Energy produced from the Foxtail Wind Energy Center and injected into the Ellendale-Tatanka 230 kV line will be delivered into Xcel's integrated system to serve electric customers in North Dakota and in the upper Midwest.

### **Cultural Resources**

36. Foxtail conducted a Class I Literature Search of the proposed Project Area to identify previously recorded archaeological sites identified during previous surveys, and historic architecture within the Project area and a one mile study area surrounding the Project area.

Based on the results of this study, Foxtail conducted its additional surveys for architectural and cultural resources, and the sites identified in the Class I Literature Search will not be impacted by the Project.

37. Foxtail also conducted a Class II Architectural Survey of the proposed Project Area and submitted the report to the State Historical Society of North Dakota (SHPO). Foxtail received a concurrence letter from SHPO on September 18, 2017. The Concurrence letter is identified as Hearing Exhibit 12.
38. Foxtail conducted a Class III Cultural Resources Inventory for archaeological resources and has received a concurrence letter from SHPO on October 31, 2017 accepting the report as written with no comments. The Concurrence letter is identified as Hearing Exhibit 19.
39. Foxtail also conducted a viewshed analysis report to address potential impacts to the viewshed of the Whitestone Hill Battlefield Site, which is located 23 miles southeast of Kulm, ND in Dickey County, and is approximately 2.6 miles north of the nearest Project turbine. This report was submitted to SHPO and Foxtail received a concurrence letter from SHPO on November 6, 2017. The report was submitted to the Commission as Hearing Exhibit 20 and the concurrence letter was submitted to the Commission as Hearing Exhibit 21.
40. Fencing will be used during construction for any sensitive resources in close proximity to construction activities to ensure that they are not inadvertently disturbed. Foxtail has designed the Project area to incorporate the avoidance buffers as recommended by the consultant that assisted in conducting the surveys.
41. Foxtail has also undertaken a significant voluntary outreach and consultation with Native American Tribes to address potential cultural concerns and avoid potential impacts to resources of tribal or cultural significance.
42. Project facilities will avoid identified cultural resource sites and cultural resources are not expected to be impacted by the Project.
43. The Commission finds that the layout of the Project will avoid all direct impacts on archaeological resources and architectural resources that are potentially eligible for listing on the National Register of Historic Places, sites that may be deemed culturally sensitive, or sites that have not been evaluated for National Register eligibility following the guidelines outlined by the State Historical Society of North Dakota, and will address potential viewshed impacts for the Whitestone Hill Battlefield Site.
44. In the event the Project's layout changes from the layout provided in Hearing Exhibit No 16, Foxtail Wind will complete Class III cultural resource survey work for any previously un-surveyed areas, in accordance with SHPO guidance; will submit the findings to SHPO for review; and will obtain and file with the Commission a copy of SHPO's response prior to beginning construction in those areas.

## **Wetlands, Woodlands, Native Prairie and Wildlife**

45. Woodlands are sparse in the Project Area. If trees or shrubs are impacted by the Projects, Foxtail Wind will comply with the Commission's tree and shrub mitigation specifications.
46. A wetland determination was completed for the Project. In the event the Project layout changes, Foxtail Wind will complete a wetland determination of any previously unsurveyed areas, as necessary. Foxtail Wind will minimize permanent wetland impacts from the Project to the extent practicable. Any potential impacts are expected to qualify for coverage under the nationwide permits 12 and 14 without pre-construction notification.
47. Foxtail Wind conducted fall and spring point counts, lek aerial surveys, a ground-based raptor nest survey, eagle use survey, a study of bat activity, and an analysis of potential whooping crane habitat in the area of the wind energy facility. No confirmed whooping crane sightings have been documented and the likelihood of whooping cranes is low. The studies demonstrated that no federally endangered, threatened, or candidate species were recorded, and no significant impacts to wildlife are anticipated.
48. Foxtail has conducted numerous teleconferences and in-person meetings with the NDGFD and USFWS regarding baseline data availability, preliminary findings, and results, and development of a Wildlife Conservation Strategy (WCS) between 2015 and 2017. These discussions have included exchange of data with the USFWS Wetland Management District, which verified that Foxtail has completely avoided all USFWS grassland easements and protected wetland basins within USFWS wetland easements.
49. USFWS and NDGFD have articulated that an industry-led collaborative referred to as the North Dakota Wind and Wildlife Collaborative (NDWWC) is in the process of developing, but has not yet completed, an approach to protection of wildlife and native habitats that addresses avoidance, minimization, and offsets where appropriate. In light of this effort, Foxtail Wind has coordinated with the NDGFD and USFWS with respect to potential mitigation measures, and has finalized its WCS, which was submitted as Late Filed Exhibit 29.
50. The WCS outlines Foxtail's commitment to continued efforts to demonstrate due diligence in avoiding and minimizing impacts to, wildlife, avian, and bat species in association with the development and operation the Project. A key component of the WCS is a commitment to offer a voluntary offset for impacts to native prairie that were unavoidable after all avoidance and minimization efforts were implemented.
51. Foxtail's agreement to provide voluntary offsets has been memorialized in an agreement between Foxtail and NDGFD pursuant to which Foxtail will make a payment to the North Dakota Natural Resources Trust for the purposes of implementing long-term, "on the ground" native prairie conservation actions. Foxtail has and will continue to address concerns raised by the USFWS and NDGFD regarding mitigating the potential impacts of the Project, as set forth in Late Filed Exhibits 29, 30, and 31.

52. Foxtail Wind has coordinated with numerous local, state, and federal agencies identified in the Application. After coordination, neither USFWS, NDGFD, nor any other agency has objected to siting and construction of the Project as proposed.

#### **Sound and Shadow Flicker Analyses**

53. A sound analysis was conducted for the Project. The analysis demonstrates sound levels for the Project will comply with the Commission's Avoidance Area requirement that sound levels within 100 feet of an inhabited residence or community building not exceed 50 dBA unless a waiver is obtained. The Project meets the Commission's sound level requirement at all but two participating landowner's residences, for which informed waivers were obtained as demonstrated in Hearing Exhibit No. 27.
54. A detailed shadow flicker analysis was conducted for the Wind Project, using realistic modeling assumptions. Based on the shadow flicker analysis, potential shadow flicker levels are expected to be below 30 hours per year at all non-participating residences, and all but one participating residence. The participating landowner executed an informed, written waiver, as demonstrated in Hearing Exhibit No. 27.

#### **Additional Mitigation Measures**

55. Foxtail Wind made certain representations and covenants as contained in the Certification Relating to Order Provisions - Wind Energy Conversion Facility Siting with accompanying Tree and Shrub Mitigation Specifications, which have been filed with the Commission.
56. Foxtail Wind has developed a noxious weed management and control plan addressing how it will deal with noxious weeds encountered during construction as reflected in Late Filed Exhibit 32.
57. The Commission's setbacks applicable to the Project with respect to roads are one and one-tenth times the height of the turbine from the interstate or state roadway right-of-way; and one and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway. Foxtail Wind has also implemented a setback of 1,400 feet from non-participating residences. The closest turbine to a non-participating residence is 2,520 feet.
58. All setbacks applied will be measured from the center of the base of the turbine to the closest part of the applicable feature.
59. Foxtail Wind will employ best management practices to minimize impacts on ground and surface water, and to prevent soil erosion. Coverage under the North Dakota Department of Health's National Pollutant Discharge Elimination System (NPDES) general construction permit would be obtained prior to the start of construction, and sediment runoff into surface waters would be minimized and/or avoided through the use of best management practices outlined in the accompanying Stormwater Pollution Prevention Plan. Construction of the

Project is not anticipated to have a significant adverse impact on surface or ground water resources or soils. Temporarily-disturbed areas will be restored and reseeded.

60. The Project turbines and the Met tower will have lighting and markings that comply with FAA requirements and the FAA's review included the evaluation of any potential interference with air traffic. Foxtail Wind will submit Notices of Proposed Construction or Alteration to the FAA for all Project turbines and FAA-approved radar-activated ADLS or an equivalent lighting-mitigation system will be installed.
61. Foxtail Wind will coordinate with local authorities and first responders regarding emergency response measures as part of the Projects commissioning activities.
62. Foxtail Wind will participate in the North Dakota One-Call Excavation Notice System.

From the foregoing Findings of Fact, the Commission now makes it:

### **Conclusions of Law**

1. The Commission has jurisdiction over this proceeding under North Dakota Century code Chapter 49-22.
2. The wind energy conversion facility proposed by Foxtail Wind is an energy conversion facility as defined in North Dakota Century Code § 49-22-03(5).
3. The application submitted by Foxtail Wind meets the site evaluation criteria and the corridor and route evaluation criteria required by North Dakota Century Code Chapter 49-22.
4. The location, construction, and operation of the proposed energy conversion facility will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The proposed energy conversion facility will minimize adverse human and environmental impact, while ensuring continuing system reliability and integrity, and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
6. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.
7. The Commission has jurisdiction to ensure compliance with National Electric Safety Code standards in the construction and operation of the energy conversion facility.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

### **Order**

The Commission orders:

1. Certificate of Site Compatibility for an Energy Conversion Facility No.\_\_\_\_\_, is issued to Foxtail Wind, LLC for the construction, operation, and maintenance of an energy conversion facility known as the Foxtail Wind Energy Center corresponding to the Project area depicted in Hearing Exhibit 16.

2. Within the permitted area, Foxtail Wind is authorized to site and construct up to 150 megawatts within the designated area consisting of up to 75 wind turbines in proposed and alternate locations, as identified in Hearing Exhibit 16, along with electric collection and communication lines, a project substation, access roads, an operations and maintenance building, an interconnection yard, and other associated facilities as identified in the application and at the hearing.

3. If modifications are made to the Project layout, Foxtail Wind shall complete a Class III cultural resource survey for any previously un-surveyed portions of the designated site affected by Project-related construction activities, in accordance with SHPO guidance; shall submit cultural resource findings to SHPO for review; and shall obtain and file a copy of SHPO's response with the Commission prior to beginning construction in said areas.

4. If modifications are made to the Project layout, Foxtail Wind shall complete a wetland determination of any previously un-surveyed areas affected by Project-related activities, as necessary, and file the report with the Commission.

5. If modifications made to the Project layout are not covered by the current noise analysis, Foxtail Wind shall conduct a sound analysis and file a report with the Commission to ensure the Project complies with the Commission's Avoidance Area Sound Requirement.

6. Foxtail Wind shall site Project turbines so as to meet a shadow flicker goal of 30 hours per year or less at each currently occupied residence, considering site-specific conditions, unless otherwise agreed to by the landowner.

7. In the event Wind Project modifications occur that are not covered by its current shadow flicker analysis, Foxtail Wind shall conduct a shadow flicker analysis and file a report with the Commission to ensure this requirement is met.

8. The Certification Relating to Order Provisions - Wind Facility Siting with accompanying Tree and Shrub Mitigation specifications as filed with the Commission on November 13, 2017, are incorporated by reference and attached to this Order.

9. The Noxious Weed Management and Control Plan is hereby incorporated by reference and attached to this Order.

10. Foxtail Wind shall adhere to the terms of the agreement between Foxtail and NDGFD pursuant to which Foxtail will make a payment to the North Dakota Natural Resources Trust for the purposes of implementing long-term, “on the ground” native prairie conservation actions.

**PUBLIC SERVICE COMMISSION**

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Julie Fedorchak  
Commissioner

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Randy Christmann  
Chairman

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Brian Kroshus  
Commissioner

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

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

**Case No. PU-17-284**  
**OAH File No. 20170425**

**CERTIFICATE OF SERVICE**

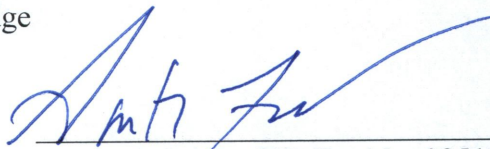
I, the undersigned, hereby certify that a true and correct copy of Foxtail's Proposed Findings of Fact, Conclusions of Law, and Order was on December 21, 2017 served by mail to the following:

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Timothy J. Dawson, ALJ  
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With courtesy copies sent via email to Judge Dawson and Mr. Schmidt.



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