

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

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

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

**January 31, 2018**

**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 (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 Wind 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.

#### **Size, Type and Preferred Location of Facility**

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 Project area depicted in Hearing Exhibit No. 16 identifies the project boundary for the Project.

4. 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.

5. 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 strikes.

6. A transformer will be installed at the base of each turbine, 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. 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.

7. 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 simultaneous control of turbines.

8. 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.

9. 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.

10. The Project will be constructed pursuant to National Electric Safety Code requirements.

11. A functioning light-mitigation technology system will be installed in compliance with North Dakota Century Code §49-22-16.4.

12. Foxtail entered into a Purchase and Sale Agreement with Northern States Power Company (NSP) dba Xcel Energy under which Foxtail Wind and NSP will seek Commission approval to transfer the Certificate of Site Compatibility (Certificate) to NSP. NSP currently intends to construct the Project in two phases during 2018 and 2019.

#### Study of Preferred Location

13. Foxtail Wind evaluated a study area and ultimately selected the proposed site for the Wind Project based on a number of factors, including: 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.

14. 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; North Dakota Game & Fish Department (NDGFD); North Dakota State Historic Preservation Office (SHPO); North Dakota Department of Health; North Dakota State Water Commission.

15. Agency consultations and comments are noted in the application, exhibits, and testimony presented at the public hearing. Foxtail Wind has undertaken 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 Project.

16. Foxtail Wind 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 additional surveys for architectural and cultural resources. Sites identified in the Class I Literature Search will not be impacted by the Project.

17. Foxtail Wind 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.

18. Foxtail Wind 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.

19. Foxtail Wind 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 Wind 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.

20. Foxtail undertook a voluntary outreach and consultation with Native American Tribes to address potential cultural concerns and avoid potential impacts to resources of tribal or cultural significance.

21. 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. Any permit required by local governing bodies must be obtained prior to construction of the Project.

22. Foxtail Wind reports 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 a land use agreement once the Certificate of Site Compatibility is issued as evidenced in Hearing Exhibit 2.

#### Siting Criteria

23. 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.

24. An Exclusion Area is a geographical area that must be excluded in the consideration of a site for an energy conversion facility.

25. 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.

26. 642 acres of the Project area (3.2%) consists of prime farmland. Prime farmland will be avoided to the extent practicable. Permanent impacts to prime farm land are estimated to be 2.8 acres, which is 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.

27. 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.

28. With respect to Avoidance Areas, historical resources are present within the Project Area, but the Project will avoid impacts to historical resource sites. Construction will proceed in a manner designed to protect and leave undisturbed the identified historical resources. Fencing will be used during construction for any sensitive resources in close proximity to construction activities to ensure that they are not inadvertently disturbed.

29. 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.

30. 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 an 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.

31. 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). Foxtail Wind will minimize permanent wetland impacts from the Project to the extent practicable. Any potential impacts are expected to qualify under the Clean Water Act for coverage under the nationwide permits 12 and 14 without pre-construction notification. In the event the Project layout changes, Foxtail Wind will complete a wetland determination of any previously un-surveyed areas, as necessary.

32. 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.

33. 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 Wind 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. The waiver from this participating landowner also addresses shadow flicker.

34. Foxtail Wind submitted evidence that 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).

35. 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 agricultural land are anticipated.

36. During construction, the Project 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.

37. 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.

38. No 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.

#### Mitigation Measures

39. 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.

40. Foxtail Wind 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 Wind has avoided all USFWS grassland easements and protected wetland basins within USFWS wetland easements.

41. 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.

42. The WCS outlines Foxtail Wind's plan to avoid and minimize impacts to wildlife, avian, and bat species in association with the development and operation the Project. The WCS also outlines Foxtail's commitment to offer voluntary offsets for unavoidable impacts to native prairie, which was a significant concern identified by NDGFD and USFWS.

43. Foxtail Wind's commitment to provide voluntary offsets has been memorialized in an agreement between Foxtail and NDGFD. Foxtail has and will continue to address concerns raised by the USFWS and NDGFD regarding mitigation of potential impacts of the Project upon native prairie lands, as set forth in Late Filed Exhibits 29, 30, and 31.

44. 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 waivers were obtained as demonstrated in Hearing Exhibit No. 27.

45. A 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 a written waiver, as demonstrated in Hearing Exhibit No. 27.

46. 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 executed and filed with the Commission.

47. 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.

48. The closest turbine to a non-participating residence is 2,520 feet.

49. All setbacks applied will be measured from the center of the base of the turbine to the closest part of the applicable feature.

50. 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.

51. 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. A Determination of No Hazard is required to be obtained from the FAA for the final Project layout.

52. Foxtail Wind will coordinate with local authorities and first responders regarding emergency response measures as part of the Projects commissioning activities.

53. 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. 53 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.

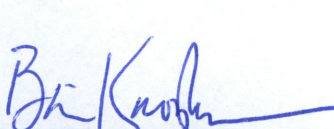

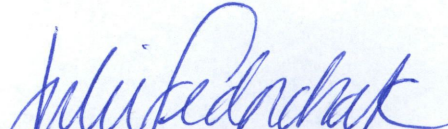
5. If modifications made to the Project layout are not covered by the current noise analysis, Foxtail Wind shall conduct a sound analysis and file a report with the Commission to ensure the Project complies with the Commission's avoidance area sound requirement.

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.

**PUBLIC SERVICE COMMISSION**

		
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<b>Brian Kroshus</b> Commissioner	<b>Randy Christmann</b> Chairman	<b>Julie Fedorchak</b> Commissioner

# **PUBLIC SERVICE COMMISSION**

## **STATE OF NORTH DAKOTA**

### **Certificate of Site Compatibility Number 53**

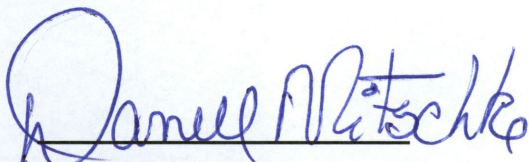
*This is to certify that the Commission has designated an energy conversion facility site for Foxtail Wind, LLC, for the construction and operation of a wind energy facility and associated facilities in Dickey County, North Dakota.*

*The facility may be sited in this designated location in compliance with the energy conversion facility siting criteria. This certificate is issued in accordance with the Finding of Fact, Conclusion of Law and Order of the Commission in Case No. PU-17-284 dated January 31, 2018 and is subject to the conditions and limitations noted in the order.*

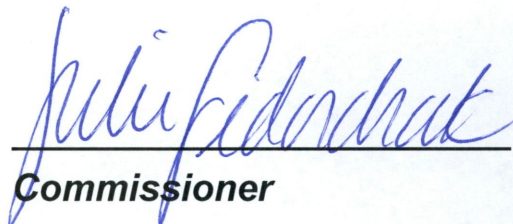
*Bismarck, North Dakota, January 31, 2018.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**



**Executive Secretary**



**Commissioner**



STINSON  
LEONARD  
STREET

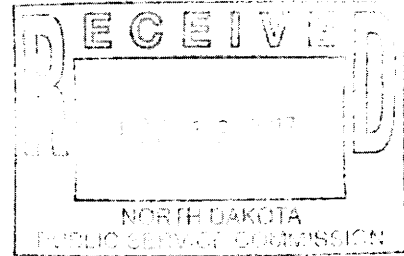
aron K. Friess  
701.221.8606 DIRECT  
701.221.8601 DIRECT FAX  
aron.friess@stinson.com

**Exhibit 22**  
**CASE NO. PU-17-284**

November 13, 2017

**Hand-Delivered**

Mr. Darrel Nitschke  
Executive Director  
North Dakota Public Service Commission  
600 E. Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480



Re: Foxtail Wind, PU-17-284

Dear Mr. Nitschke:

Enclosed for filing are 10 copies of the following documents in the above cases:

1. Certification Relating to Order Provisions Wind Energy Conversion Facility Siting; and
2. Tree and Shrub Mitigation Specifications.

Please let us know if you have any questions.

Sincerely,

Stinson Leonard Street LLP

Aaron K. Friess

AKF:cp

Enclosures

**79** **PU-17-284** Filed: 11/20/2017 Pages: 11  
**Exhibit 22 - Foxtail Certification Relating to Order Provisions**

Foxtail Wind, LLC

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Certification Relating to Order Provisions and Tree & Shrub Mitigation Specifications  
Foxtail Wind, LLC  
Aaron Friess, StinsonLeonardStreet,LLP

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STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Foxtail Wind, LLC  
Foxtail Wind Energy Center - Dickey County  
Siting Application

Case No. PU-17-284

**CERTIFICATION RELATING TO ORDER PROVISIONS  
WIND ENERGY CONVERSION FACILITY SITING**

I am John DiDonato, a representative of Foxtail Wind, LLC ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that the Certificate of Site Compatibility will be issued by the Commission subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed energy conversion facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the energy conversion facility that requires said license or permit.
4. Company understands and agrees that the Certificate of Site Compatibility is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by the Certificate of Site Compatibility for the energy conversion facility are subject to modification by

order of the Commission if deemed necessary to protect further the public or the environment.

7. Company is aware that under North Dakota Century Code section 49-02-27 the Commission has rules for decommissioning of wind energy conversion facilities. Company agrees to comply with all decommissioning rules adopted by the Commission.

**Construction:**

8. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
9. Company understands and agrees that all cultural resource mitigation plans must be approved by the North Dakota State Historic Preservation Office prior to the start of any fieldwork and construction activity in the affected area.
10. Company understands and agrees that topsoil removal will begin when the Commission's third party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. Company shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
11. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated of construction activities on a monthly basis.
12. Company is aware that North Dakota law requires that all companies that own or operate electric generation of any size for the primary purpose of resale must comply with the standards of the National Electrical Safety Code in effect at the time of construction of the generation facility, and agrees to comply with that requirement.
13. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
14. Company understands and agrees that it shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.
15. Company understands and agrees that topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas, roadways, tower

locations, and locations of associated facilities must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.

16. Company understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Company to open cut the road.
17. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
18. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission.
19. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.
20. Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.

**Restoration and Maintenance:**

21. Company agrees that it shall, as soon as practicable upon the completion of the construction of the energy conversion facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
22. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the energy

conversion facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.

23. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
24. Company will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.
25. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
26. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
27. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
28. Company understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
29. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
30. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

**Communication with Landowners and PSC:**

31. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
32. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the energy conversion facility, including injuries to any person, a tower collapse, or a catastrophic turbine failure.
33. Company agrees to report to the Commission, as soon as reasonably possible, the presence in or near the approved site of any critical habitat of threatened or

endangered species that Company becomes aware of and which were not previously reported to the Commission.

34. Company agrees to provide the Commission with both an electronic and a paper copy of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
35. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.
36. Company agrees that it shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility and any restriction or danger concerning the proposed energy conversion facility.
37. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company

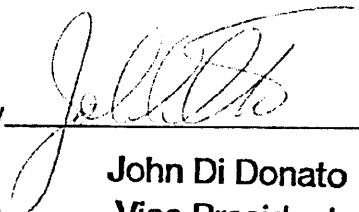
**Modification of Energy Conversion Facility or Energy Conversion Site Plan:**

38. Before conducting any construction activities for any modification within the designated site, the Company will file the name and contact information for a key contact person for the purposes of notice and communication during the site modification application and will use the following procedures:
  - A. Before conducting any construction activities for any modification within the designated site, and such construction activities will not affect any known exclusion or avoidance areas within the designated site, the Company will file certification and supporting documentation:

1. Affirming that construction activities will not affect any known exclusion or avoidance areas within the designated site;
  2. Including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated site and site modification(s); and
  3. Affirming that Company will comply with the Commission's order, law and rules designating the site.
- B. Before conducting any construction activities for any modification within the designated site, and such construction activities will not affect any known exclusion but may affect an avoidance area within the designated site, the Company will file:
1. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
    - a. the designated site and the site modification;
    - b. all exclusion and avoidance areas within the portion of the designated site containing the site modification.
  2. Certification and supporting documentation affirming that construction activities will not affect any known exclusion area.
  3. All field studies performed on the portion of the designated site containing the site modification;
  4. Specific information about any mitigation measures Company will take within the modification area;
  5. Certification that each owner of real property on which the modification is to be located and any applicable governmental entity with an interest in the same modification area do not oppose the modification;
  6. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
  7. Certification that Company will comply with the Commission's order, law and rules designating the site.
39. Company acknowledges and agrees that written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity.

Dated this 10 day of November, 2017.

Foxtail Wind, LLC

By   
Its John Di Donato  
Vice President

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

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

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

**Tree and Shrub Mitigation Specifications**

**Inventory**

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation

population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

#### **Clearing for Construction**

7. Trees and shrubs must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced must be noted on the inventory.

#### **Replacement**

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with and approved by the Commission.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-

noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).