

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

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

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

**ORDER ON TREE AND SHRUB MITIGATION SPECIFICATIONS**

**September 22, 2021**

**Preliminary Statement**

The Commission's January 31, 2018 Findings of Fact, Conclusions of Law and Order (Order) issued Certificate of Site Compatibility No. 53 to Foxtail Wind, LLC for the 150 MW Foxtail Wind Energy Center in Dickey County of North Dakota (Project). The Commission's December 6, 2018 Order on Reissuing Certificate transferred Certificate of Site Compatibility No. 53 to Northern States Power Company (NSP). Attached to the January 31, 2018 Order was the Tree and Shrub Mitigation Specifications for the Project.

On March 13, 2019, the Commission revised its Tree and Shrub Mitigation Specifications to update the process for mitigation reporting.

On December 12, 2019, the Commission approved NSP's Tree and Shrub Inventory and Mitigation / Replacement Plan. The Plan indicated that tree and shrub replacement plantings were scheduled to occur in the spring or early summer of 2020.

On June 22, 2021, Commission Staff sent a letter to NSP suggesting that NSP may wish to consider complying instead with the March 13, 2019, version of the Tree and Shrub Mitigation Specifications.

On July 27, 2021, NSP responded to the June 22, 2021 Commission Staff letter.

**Discussion**

The Tree and Shrub Mitigation Specifications (Specifications) attached to and made part of the Commission's January 31, 2018 Order required that two trees be planted for every one tree removed, and that two shrubs be planted for one shrub removed. The Specifications required that tree and shrub replacements be inspected annually, in September, for three years, with the first annual inspection at least one year from the anniversary date of the original plantings. The Specifications further required that a report of each annual inspection 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.

As a result of Project construction, 1,171 trees and shrubs were removed.

The Commission's March 13, 2019 Specifications were conceived to be goal or purpose oriented to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefits to landowners, farmers and ranchers, the community, wildlife and the environment. In lieu of annual reporting for three years, the Commission's March 13, 2019 Specifications requires one final report filed by the company after two years that details the company's tree and shrub mitigation efforts and describes how the company's mitigation achieved the purpose stated above.

Since NSP's trees and shrubs mitigation plan is only in its first year, Commission Staff suggested that NSP consider complying instead with the March 13, 2019 version of the Tree and Shrub Mitigation Specifications.

NSP has indicated a desire to comply with the March 13, 2019 version of the Tree and Shrub Mitigation Specifications instead of the January 31, 2018 Tree and Shrub Mitigation Specifications.

Having considered this matter, the Commission issues the following:

### Order

The Commission Orders that its January 31, 2018 Order in Case No. PU-17-284 is amended to replace the Tree and Shrub Mitigation Specifications adopted in that Order with the March 13, 2019 version of the Tree and Shrub Mitigation Specifications, attached to and made part of this Order.

### PUBLIC SERVICE COMMISSION

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chair

  
Brian Kroshus  
Commissioner

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**Tree and Shrub Mitigation Specifications**

**Inventory**

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

**Clearing**

The maximum width of tree and shrub removal is 50 feet, unless otherwise approved by the Commission.

**Replacement**

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.

6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.