

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-17-284

AFFIDAVIT OF SERVICE BY REGULAR AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **27th** day of **September 2021**, she deposited in the United States Mail, Bismarck, North Dakota, **9** envelopes by first class mail, fully prepaid, securely sealed each containing a photocopy of:

- **Order on Tree and Shrub Mitigation Specifications**

The envelopes were addressed as follows:

See attached list

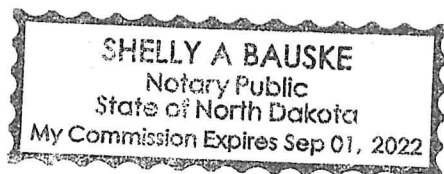
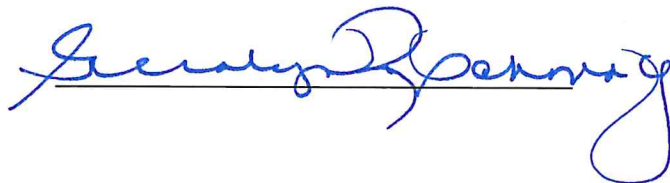
Geralyn R. Schmaltz further deposes and says that on the **27th day of September 2021**, she sent an electronic message to **49** addressees, each including an electronic copy in portable document format of the same document.

The electronic mails were addressed as follows:

See attached list

The addresses shown are the respective addressee's last reasonably ascertainable post office and electronic mail addresses.

Subscribed and sworn to before me
this **27th day of September 2021**.




Notary Public

(SEAL)

County Commission
Dickey County Courthouse
PO Box 215
Ellendale ND 58436

County Auditor
Dickey County Courthouse
PO Box 215
Ellendale ND 58436

Federal Aviation Administration
2301 University Avenue Building 23B
Bismarck ND 58504

City of Ellendale
Mayor
PO Box 267
Ellendale ND 58436

City of Forbes
Mayor
P O Box 66
Forbes ND 58439

City of Fullerton
Mayor
9373 86th Street SE
Fullerton ND 58441

City of Ludden
Mayor
110 Center Street
Ludden ND 58474

City of Monango
Mayor
308 Main
Monango ND 58471

City of Oakes
Mayor
124 S 5th Street
Oakes ND 58474-1610

ndaero@nd.gov
Gaye Niemiller
Aeronautics Commission
PO Box 5020
Bismarck ND 58502-5020

masagsve@nd.gov
Matt Sagsveen
Attorney General's Office

todd.j.lindquist@usace.army.mil
Todd Lindquist
Corp of Engineers
PO Box 527
Riverdale ND 58565-0527

cte@nd.gov
Dept of Career and Technical Education
State Capitol
Bismarck ND 58505

governor@nd.gov
Doug Burgum
Governor's Office
State Capitol
Bismarck ND 58505

bruce.johnson.25@us.af.mil
Bruce Johnson
Minot AFB

Minot ND

joey.specht@us.af.mil
Joey Specht
Minot AFB

Minot ND

stevebest@nd.gov
Steve Best
N D Water Commission
900 E Boulevard
Bismarck ND 58505

christi.fisher@nd.usda.gov
Christi Fisher
NATURAL RESOURCE CONSERVATION SVC
PO BOX 1458
BISMARCK ND 58502-1458

commerce@nd.gov
ND Commerce Department

goehring@nd.gov
Doug Goehring
Agriculture Department
State Capitol
Bismarck ND 58505

BLM MT North Dakota FO@blm.gov
Bureau of Land Management
North Dakota Field Office

dhseo@nd.gov
Department of Human Services

energyimpact@nd.gov
Energy Infrastructure and Impact Office

nathan.davis@nd.gov
Nathan Davis
Indian Affairs Commission
State Capitol - 1st Floor J Wing INSIDE
Bismarck ND 58505

lauren.kinker@us.af.mil
Lauren Kinker
Minot AFB

Minot ND

trev.albright@us.af.mil
Trev Albright
Minot AFB

Minot ND

gheiser@nd.gov
Gerald Heiser
N D Water Commission
900 E Boulevard
Bismarck ND 58505

ndascd@lincolnnoakes.com
ND Assoc of Soil Conservation Dist
3310 University Drive
Bismarck ND 58504-7564

ksonsalla@nd.gov
Kevin Sonsalla
ND Department of Commerce

mdockter@nd.gov
Monte Dockter
ND Department of Transportation
State Highway Building
Bismarck ND 58505

dtlRequest@nd.gov
Jodi Smith
ND Dept. of Trust Lands

caboyd@nd.gov
Clint Boyd
ND Geological Survey

sjarntson@nd.gov
Sara Arntson
ND Job Service
P.O. Box 5507 INSIDE MAIL
Bismarck ND 58506-5507

mhumann@nd.gov
Mike Humann
ND Land Department

ndicinfo@nd.gov
North Dakota Industrial Commission

thomas.claeys@ndsu.edu
Thomas Claeys
NSDU North Dakota State Forest Service

krockema@nd.gov
Karl Rockeman
State Health Department

lbmeidinger@nd.gov
Lorna Meidinger
State Historical Society

jmagrum@nd.gov
Jeffrey Magrum
State Representative
PO Box 467
Hazelton ND 58544-0467

dglatt@nd.gov
David Glatt
ND Dept. of Environmental Quality

jwilliam@nd.gov
Jeb Williams
ND GAME & FISH DEPT
INSIDE MAIL

emurphy@nd.gov
MR ED MURPHY
ND GEOLOGICAL SURVEY

labor@nd.gov
ND Labor Department

jjkringstad@ndpipelines.com
ND Pipeline Authority

atravnicek@nd.gov
Andrea Travnicek
North Dakota Parks & Rec
1600 E Century Ave, Ste. 3 INSIDE MAIL
Bismarck ND 58503-0649

dglatt@nd.gov
Dave Glatt
State Health Department

pwax@nd.gov
Peter Wax
State Health Department

sertelt@nd.gov
Sebastian Ertelt
State Representative
906 Ash Street
Lisbon ND 58054-4316

kskroch@nd.gov
Kathy Skroch
State Representative
10105 155th Avenue SE
Lidgerwood ND 58053-9761

mbrandenburg@nd.gov
MIKE BRANDENBURG
STATE REPRESENTATIVE
8044 COUNTY ROAD 34
EDGELEY ND 58433-9761

rerbele@nd.gov
ROBERT S ERBELE
STATE SENATOR
6512 51ST AVE SE
LEHR ND 58460-9149

sschwenke@fs.fed.us
Sherri Schwenke
U S Forest Service
240 W Century Ave
Bismarck ND 58501-1494

cenwo-de@usace.army.mil
District Engineer
US Army Engineer District Omaha
1616 Capitol Ave
Omaha NE 68102

ndfieldoffice@fws.gov

US FISH & WILDLIFE SERVICE
3425 MIRIAM AVE
BISMARCK ND 58501-7926

jdotzenrod@nd.gov
JIM DOTZENROD
STATE SENATOR
507 5TH ST
WYNDMERE ND 58081-4217

wendy ross@nps.gov
Wendy Ross
Theodore Roosevelt Nat'l Park
PO Box 7
Medora ND 58645

gjwiche@usgs.gov
District Chief
U S Geological Survey
821 E Interstate Ave
Bismarck ND 58501

jessica n johnson@fws.gov
Jessica Johnson
US Fish & Wildlife Service
3425 Miriam Ave
Bismarck ND 58501

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

**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

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.