

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Burke Wind, LLC
Burke County Wind Energy Center
Burke County
Siting Application**

Case No. PU-18-344

**Burke Wind, LLC
Burke Wind Transmission Line
Burke and Mountrail Counties
Siting Application**

Case No. PU-18-302

POST-HEARING BRIEF OF BURKE WIND, LLC

Burke Wind, LLC (“Burke Wind”) hereby submits this Post-Hearing Brief in support of its request that the North Dakota Public Service Commission (“Commission”) issue a certificate of site compatibility for the 200 Megawatt (“MW”) Burke Wind Energy Center (the “Wind Project”) located in Burke County, North Dakota (Case No. PU-18-344) and a certificate of corridor compatibility and route permit for the Burke Wind Transmission Line (the “Transmission Project”) located in Burke and Mountrail Counties, North Dakota (Case No. PU-18-203) (collectively referred to herein as the “Projects”). Burke Wind appreciates the Commission’s consideration of this Post-Hearing Brief. As demonstrated herein and by the substantial evidence that has been submitted to date by Burke Wind in these proceedings, Burke Wind meets all the requirements for issuance of the requested certificates.

I. Procedural History

On March 8, 2019, a consolidated hearing was held on Burke Wind’s Amended Application for a Certificate of Site Compatibility for the Wind Project (PU-18-344, Docket No. 16) and Burke Wind’s Consolidated Application for Certificate of Corridor Compatibility and Route Permit for the Transmission Project (PU-18-302, Docket No. 1).

On April 2, 2019, the Commission held a work session to discuss the Projects’ siting applications and March 8, 2019 hearing. The Commission tabled its discussion of the Projects until hearing transcripts were finalized and subsequently filed with the Commission.

On April 25, 2019, Burke Wind filed copies of the Projects’ hearing transcripts with the Commission.

On May 13, 2019, the Commission held a second work session to discuss the Projects in more detail. The Commission’s discussion focused primarily on the Projects’ impacts to wetlands, native prairie, protected species, and associated mitigation efforts.

II. Summary of Post-Hearing Brief

Burke Wind has provided extensive information regarding the Projects' assessed impacts and impact avoidance, minimization, and mitigation efforts as identified in Burke Wind's Projects' applications, supporting studies and reports, and through testimony from its witnesses at hearing. Burke Wind submits this Post-Hearing Brief in order to highlight this information for the Commission's review in considering the applications, and to further discuss Burke Wind's position with respect to assessed impacts and mitigation. Additionally, at the May 13 work session, the Commission raised certain questions regarding several items and indicated additional information would be helpful to the Commission's decision. In order to be responsive to these requests, Burke Wind has attached information regarding the following:

- **Attachment 1:** Burke Wind Mitigative Measures;
- **Attachment 2:** Refined Wind Project Site Plan (Wetlands) - identifies additional avoidance measures to eliminate all temporary and permanent impacts to wetlands regardless of jurisdictional status;
- **Attachment 3:** Map of North Dakota wind facilities located within the Missouri Coteau;
- **Attachment 4:** Whooping Crane Migration Corridor Maps - identifies the location of wind facilities within the Migratory Corridor within North Dakota and the greater United States;
- **Attachment 5:** Dakota Skipper Habitat Survey Addendum; and,
- **Attachment 6:** Wind Energy Guidelines Flowchart.

As this Post-Hearing Brief will further demonstrate, Burke Wind has satisfied the Commission's siting criteria for approving the proposed Projects and has diligently worked to minimize any potential adverse impacts. Therefore, Burke Wind respectfully requests the Commission grant the requested certificates.

III. Commission's Exclusion or Avoidance Areas

The Commission evaluates project siting with respect to the siting criteria set forth in the North Dakota Century Code Title 49-22 and North Dakota Administrative Code Section 69-06-08-01. Burke Wind has demonstrated that the Projects will not adversely impact any Commission Exclusion or Avoidance Areas. Burke Wind has also taken extensive avoidance, minimization, and mitigation measures to address impacts to other environmental and cultural resources. *See*, Attachment 1 (providing a full list of Burke Wind's Mitigative Measures).

Many of the concerns raised by the wildlife agencies with respect to the Projects hinge on impacts to North Dakota species of conservation priority and associated native prairie and wetlands habitats, as well as potentially suitable and suitable habitat for federally designated threatened and endangered species. As explained at hearing, North Dakota species of conservation priority are *not* Commission Exclusion or Avoidance Areas, nor has the Commission historically interpreted them as such. *See*, PU-18-344, Docket No. 129, Wells Testimony, Part 2, pgs. 55-58; *see also*, Derby Testimony, Part 2, pgs. 97-99. Importantly, many of these species are not necessarily "rare or unique" to North Dakota. The majority of North Dakota species of conservation priority are not formally designated as threatened or endangered species; therefore, neither these species nor their habitat fit within the parameters of the

Commission's Exclusion and Avoidance Criteria. Although the majority of species of conservation priority and their respective habitat do not constitute Exclusion and Avoidance Areas, Burke Wind has nevertheless studied potential impacts to these species and implemented various avoidance, minimization, and mitigation measures to reduce potential adverse impacts.

Similarly, potentially suitable and suitable habitat for federally designated species is not a Commission Exclusion or Avoidance Area. Rather, areas critical to the life stages of threatened or endangered species is a criteria the Commission has applied to designated critical habitat of federally listed threatened or endangered species. Burke Wind has submitted substantial evidence in the record to demonstrate that, although these areas are not governed by the Commission's siting criteria, Burke Wind has committed to various mitigation measures to minimize associated impacts to these areas.

IV. Wetlands

During the May 13 work session, the Commission discussed concerns regarding impacts from the Projects to wetlands. From initial project siting, Burke Wind has sited the Projects to minimize impacts to all wetlands, regardless of jurisdictional status. *See*, 200 MW Amended Application (PU-18-344, Docket No. 16, pg. 78) ("During the design phase of the Project, measures were taken to avoid impacts to all wetland areas both those that fall under [U.S. Army Corps of Engineers ("USACE")] jurisdiction and those that are isolated . . ."). As Burke Wind presented at the March 8 hearing, the Projects completely avoid impacts to jurisdictional wetlands and waters of the USACE and Burke Wind avoided and/or minimized impacts to all remaining wetlands. At that time, the Wind Project's minimal remaining direct permanent impacts on wetlands consisted of approximately one acre of the Wind Project's 22,933 acre Project Boundary (or less than 0.004% of the Wind Project Boundary).

In response to the discussion at the Commission's May 13 work session, Burke Wind has committed to additional measures to eliminate wetland impacts by refining Wind Project infrastructure. As a result of Burke Wind's additional commitments, and as discussed in more detail below, Burke Wind has eliminated all temporary and permanent impacts to any wetlands regardless of jurisdictional status. Specifically, Burke Wind has eliminated all wetland impacts by: (i) committing to bore all collection lines in locations that would have otherwise resulted in wetland impacts; (ii) planning to dismantle and demobilize cranes and move around wetlands instead of over wetlands with timber matting; and, (iii) refining access road locations to minimize and avoid all wetlands impacts. Burke Wind therefore believes that it has addressed the Commission's concerns discussed at the May 13 work session.

Attachment 2 hereto identifies locations within the Wind Project where it has taken additional avoidance measures to eliminate all remaining impacts to wetlands. Attachment 2 is a copy of the final site plan submitted to the Commission at the Project's March 8, 2019 hearing (PU-18-344, Hearing Exhibit 4, Docket No. 68). In response to the discussion at the May 13 work session, Burke Wind updated this site plan so that wetlands are uniformly identified regardless of jurisdictional status, and to identify the additional collection line bore locations, crane paths that will no longer be utilized to avoid wetland impacts, and minor shifts in access road locations that were made to eliminate wetland impacts. No material changes have been

made to the Wind Project site plan, and in particular, no changes have been made to the Wind Project Boundary, turbine locations, or associated facilities including, the substation location.

All siting refinements remain entirely within the Wind Project Boundary. Burke Wind does note, however, that certain of the adjustments made to access road locations and the collection bores to avoid wetland impacts did shift slightly outside of areas previously identified in the Wind Project site plan. These shifts incorporate all landowner feedback received to date along with Burke County setback requirements and requests. These adjustments do not result in any additional impacts to native prairie.

Attachment 2 identifies all previously unsurveyed areas where collection line bores and access road locations have been adjusted to eliminate wetlands impacts. These previously unsurveyed areas consist of 52.9 acres, or less than 0.25% of the overall 22,933-acre Wind Project Boundary. Burke Wind does not anticipate adverse impacts from these adjustments to the Commission's Exclusion and Avoidance Areas. Burke Wind will conduct additional field surveys for cultural and environmental resources at these locations, which Burke Wind anticipates completing in late May or early June. Burke Wind will not commence construction in unsurveyed areas until surveys have been completed and filed with the Commission. These adjustments stem from Burke Wind's good faith efforts and commitment to eliminate all wetland impacts, and Burke Wind therefore respectfully requests that the Commission approve the refined Wind Project site plan as depicted in Attachment 2, subject to a condition that construction in unsurveyed areas cannot commence until all respective field surveys have been completed and filed with the Commission. There is good cause to grant Burke Wind's request. Burke Wind's request regarding unsurveyed areas aligns with Commission precedent and historic treatment of unsurveyed areas existing within a project site plan or corridor at the time of project approval.¹

During the May 13 work session, questions also arose around the quantification of impacts in light of the U.S. Fish and Wildlife Service ("USFWS") letter dated March 6, 2019 (PU-18-344, Hearing Exhibit No. 45, Docket No. 104). In that letter, the USFWS asserts that "236, 2.0-acre wetlands would need to be created or restored to compensate for [wetland habitat] loss." Burke Wind notes this statement is in relation to the USFWS's calculation of indirect wetland impacts. The USFWS calculated this value by assuming any wetland within 0.5 miles of proposed turbines will be impacted regardless of whether the wetland has any direct or physical impacts. The USFWS's calculation therefore produces indirect impact amounts that are disproportional to actual physical impacts. As explained below, Burke Wind has proposed additional voluntary offset measures to address this concern; however, Burke Wind notes that the USFWS calculation of indirect impacts is not reflected in any of the Commission's rules or siting criteria. Given Burke Wind's elimination of all permanent and temporary direct wetland impacts, and additional mitigation that Burke Wind has proposed to the wildlife agencies to address indirect impacts, Burke Wind respectfully requests the Commission to find that Burke Wind has sufficiently addressed wetland impacts.

¹ See, e.g., Case No. PU-15-124, Rolette Power Development, LLC, Order Docket No. 70 (approving project and conditioning construction on completion of Class III cultural resource surveys).

V. Native Prairie

Although native prairie is not a Commission Exclusion or Avoidance Area, Burke Wind recognizes the valuable habitat it provides to many species in North Dakota and has sited the Projects to avoid and minimize impacts to native prairie. PU-18-344, Docket No. 129, Wells Testimony, Part 2, pgs. 6-7. As Dr. Wells testified at the March 8 hearing, Burke Wind initially avoided and minimized native prairie impacts in the design of the original 300 MW project by removing 55 turbines from native prairie. PU-18-344, Docket No. 129, Wells Direct Testimony, Part 1, pg. 129. Burke Wind subsequently reduced the Wind Project from 300 MW to 200 MW, which resulted in moving the nearest wind turbine approximately 7 miles from Lostwood National Wildlife Refuge. *Id.* Through this significant project modification, Burke Wind addressed many of the wildlife agencies' concerns about potential impacts to wildlife, and reduced native prairie impacts by moving the project to a more a fragmented grassland area. *Id.* at pgs. 129-130.

As discussed in more detail below, the grassland composition of the Projects is not unique when compared to other projects within the region. At hearing, Mr. Clayton Derby testified that the Wind Project Boundary is comprised of approximately 50% of currently and previously tilled lands. PU-18-344, Docket No. 129, Derby Testimony, Part 2, pg. 84; *see also*, Attachment 3. Only five of the 76 planned wind turbines are located on native prairie. PU-18-344, Docket No. 71, Grassland Analysis, pg. 2. Two additional turbines are located on hayland. *Id.* "Overall, 90% of the planned turbines are located within areas classified as either cropland or broken grassland." *Id.* Total permanent impacts to unbroken grasslands approximate 5.8 acres, which is less than 0.026% of the Wind Project's total 22,933 acreage. *Id.* These facts clearly demonstrate that Burke Wind has minimized impacts to native prairie.

VI. Missouri Coteau

The wetland and native prairie composition of the Wind Project area is similar to several other existing wind energy projects in North Dakota, and is not uniquely located when compared to other areas in North Dakota or the region. PU-18-344, Docket No. 129, Derby Testimony, Part 2 pg. 83. The Wind Project is comprised of 31% tilled agriculture lands, 18% lands tilled and now planted to grass or hay, 21% percent native grasslands and approximately 10% wetlands. *Id.* at 83-84. Using North Dakota Game and Fish ("NDGF") grassland data and USFWS wetland data, the Wind Project was compared to several other wind projects in North Dakota that are similarly located within the Missouri Coteau landscape. *Id.* at 84. Attached hereto as Attachment 3 is a map that identifies the locations of wind facilities in North Dakota in relation to the Missouri Coteau. Projects immediately adjacent to the Burke Wind Project and also located within the Missouri Coteau include the Lindahl Wind Farm Project (Case No. 15-482) and the recently approved Aurora Wind Project (PU-18-352). The Burke Wind Project contains wetlands and grassland acreages similar to other projects on the Missouri Coteau. PU-18-344, Docket No. 129, Derby Testimony, Part 2 pg. 84. For example, the wetland/grassland coverage of these projects ranges from approximately 12% to 85% with most projects being comprised of approximately 40% combined wetland and native prairie landscapes. *Id.* This is similar to the Burke Wind Project, which has approximately 42% combined wetland and grassland coverage. *Id.*

Burke Wind also agrees with Commission staff's comments during the May 13 work session that a number of the agencies' references in their March 2019 correspondence letters filed immediately prior to the hearing were broad and general in nature instead of specific to the Burke Wind Project site.² For this reason, Burke Wind disagrees with the agencies' overall characterization of the Projects, which often rely on broad generalizations, rather than on site-specific information. In particular, Burke Wind disagrees with the agencies' characterization of the Burke Wind Project as being located in a unique area, particularly as compared to other recently permitted and constructed wind facilities in the Missouri Coteau.

VII. Dakota Skipper

Dakota skippers are federally listed as a threatened species. Dakota skipper “[c]ritical habitat has been federally designated in North Dakota but not in Burke or Mountrail Counties” PU-18-344, Docket No. 129, Wells Direct Testimony, Part 1, pg. 122. Burke Wind completed a desktop analysis and qualitative field habitat surveys within the Projects to determine the suitability of potential habitat. Although suitable habitat was identified within the Projects, suitable or potentially suitable habitat and designated critical habitat are not the same. *See*, PU-18-344, Docket No. 129, Wells Testimony Part 2, pg. 55. Pursuant to Commission precedent with respect to the Exclusion Area consisting of “areas critical to the life stages of threatened or endangered animal or plant species,” (N.D. Admin. Code § 69-06-08-01(1)(f)) this Exclusion Area has only applied to areas designated as *critical habitat* for threatened or endangered species, and has not applied to areas containing *suitable or potentially suitable habitat*. *See, e.g.*, PU-18-399, Docket No. 57, Order Finding of Facts of Nos. 16 and 37 (suitable occupied Dakota skipper habitat within project corridor not identified as an Exclusion Area within Commission Order).³

In addition, even though there is potentially suitable habitat within the Wind Project, Burke Wind has committed to avoid impacting all field-verified suitable Dakota skipper habitat through micrositing, boring under field-verified suitable habitat for collection, and/or spanning over habitat with respect to the Transmission Project, in addition to the other avoidance and minimization measures Burke Wind implemented. *See also*, PU-18-344, Docket No. 129, Wells Direct Testimony, Part 1, pg. 123. Burke Wind's studies and surveys demonstrate that impacts to Dakota skipper are unlikely. “With the limited flight of this species and the low presence and density of suitable habitat in the area *there is little to no likelihood of impacts to Dakota skipper populations.*” PU-18-344, Docket No. 89, Dakota Skipper Habitat Assessment, pg. 9 (*emphasis added*).

At the May 13 work session, the Commission also discussed portions of the March 6, 2019 USFWS letter (PU-18-344, Exhibit No. 45, Docket No. 104) that addressed the validity of

² For example, on pg. 2 of the attachment to the USFWS letter dated March 6, 2019 (PU-18-344, Exhibit No. 45, Docket No. 104), the USFWS references waterfowl concentrations on statewide and regional basis, and discusses land cover type associations in a much broader and more encompassing context than the site-specific studies Burke Wind provided for the 200 MW Amended Application.

³ Although the referenced example is with respect to natural gas liquids transmission pipeline siting, the Commission's Exclusion Criteria pertaining to “areas critical to the life stages of threatened or endangered animal or plant species” pertains to both energy conversion facilities and transmission facilities.

surveys conducted during the winter conditions. Burke Wind clarifies that, contrary to the broad implications in the USFWS letter, the only areas that were surveyed during winter months were a 5-acre survey of a proposed substation site that was conducted in February 2018 and a 1.35-acre survey of three crane path turning radii locations at county road junctions conducted in December 2018. The two surveys represented only 0.19% of the acreage surveyed for Dakota skipper habitat, and Burke Wind conducted the vast majority of its surveys outside of winter months. The Dakota Skipper Assessment Report (PU-18-344, Docket No. 46), which was prepared by a qualified botanist/biologist and Dakota skipper species expert who holds a USFWS permit to conduct Dakota skipper surveys, states that a total of 3,340 acres of undisturbed grassland (potential habitat) were surveyed to field-verify the presence or absence of suitable Dakota skipper habitat. The assessment concluded that 159 acres of the total 3,340 acres qualitatively surveyed were identified as field-verified suitable Dakota skipper habitat.

Although the substation was originally surveyed in February 2018 with some snow cover, the report indicates vegetation conditions were apparent at the time and noted 40% of the property appeared hayed. Additionally, the turning radii survey sites in December 2018 had identifiable vegetation. In order to confirm its winter surveys, Burke Wind's qualified and federally permitted biologist revisited the substation and three crane path turning radii locations on May 22, 2019. These updated surveys verified the absence of suitable Dakota skipper habitat at the proposed substation and crane path turning radii locations. *See* Attachment 5 (Dakota Skipper Survey Addendum, prepared by SWCA Environmental Consultants).

VIII. Whooping Cranes

The whooping crane is a federally protected species; however, "there is no federally designated critical Whooping Crane habitat within or near the projects or in the state of North Dakota." PU-18-344, Docket No. 129, Wells Testimony, Transcript Part 1, pg. 121. "Burke Wind's Whooping Crane Assessment showed that there are no potentially suitable stopover wetlands for whooping cranes within the wind project construction easement and there are seven along the transmission line corridor that intersect the centerline and will be avoided by spanning . . ." *Id.* As previously discussed, pursuant to Commission precedent, potentially suitable and suitable habitat for a federally designated threatened or endangered species does not fall within the Commission's Exclusion Area criteria. *See e.g.*, Aurora Wind Project, LLC, PU-18-352, Docket No. 115, Order Finding of Facts of No. 14 ("Potential whooping crane habitat and migration areas within the Project Area" not identified by Commission Order as Exclusion Areas). However, even prior to Burke Wind's commitment to avoid all wetland impacts, Burke Wind had committed to avoiding impacts to all wetland areas providing suitable stopover habitat for whooping cranes. PU-18-344, Docket No. 129, Wells Testimony, Transcript Part 1, pg. 121. Additional mitigative measures with respect to whooping cranes are outlined in more detail within Attachment 1 hereto.

Further, the location of wind infrastructure within the whooping crane migratory corridor is not demonstrative of likely or anticipated impacts to the species. The Projects are located within the 75% whooping crane migration corridor, which is "an area that is approximately a hundred miles wide from the Canadian border to the Gulf Coast." PU-18-344, Docket No. 129, Derby Testimony, Transcript Part 2, pg. 87; *see*, Attachment 4 (identifying numerous wind

facilities located within the 50%, 75%, and 95% flyway within North Dakota and other states spanning to Texas). With respect to North Dakota, there are numerous wind projects either currently constructed, or proposed to be constructed, throughout the 75% whooping crane migration corridor, including the Lindahl and Aurora projects, which are adjacent to the Burke Wind Project. Within the past six months, the Commission has approved the siting of two additional wind projects located in the 75% migration corridor. *See*, PU-18-352 & PU-18-280.

As Senior Wildlife Biologist Clayton Derby testified at hearing: “To date, no whooping cranes have been found as fatalities at any wind facility. While there are only 500 whooping cranes it could be argued that the lack of finding one is simply coincidental; however, there are 600,000 or more sandhill cranes that migrate the same general corridor. Like whooping cranes, no sandhill cranes have been found as fatalities at any wind facility within the migratory corridor.” PU-18-344, Docket No. 129, Derby Testimony, Transcript Part 2, pg. 87. For the reasons discussed here and in the record, “impacts to whooping cranes from the Burke projects are not anticipated.” *Id.* at pg. 88.

IX. USFWS and NDGF Agency Consultation

Burke Wind understands and respects the role of the USFWS and NDGF in analyzing proposed projects and in preserving the natural environment of the state. Accordingly, Burke Wind has undertaken significant coordination with both agencies since the fall of 2016 (PU-18-344, Docket No. 16, Appendix C and Table 8-1; *see also* Docket No. 32), and has continued these efforts even following the March 8 hearing. Through this coordination, the agencies requested that Burke Wind take a multi-tiered approach to siting the Burke Wind Project, that incorporates avoidance, minimization, and mitigation measures of the Projects’ impacts to wildlife, and Burke Wind has sited the Projects consistent with this approach. To address any remaining agency concerns, Burke Wind proposed a voluntary offset package to the agencies in February 2019. *See*, PU-18-344, Exhibit No. 46, Docket No. 105, Correspondence from John DiDonato to Director Steinwand -- Burke Wind is committed to continuing to engage and collaborate with the agencies on this Project going forward.

Despite Burke Wind’s significant coordination with the agencies leading up to the Projects’ hearing, Burke Wind’s has concerns regarding the late submission of the agencies’ comments one day prior to hearing and how that impacted procedural due process in this proceeding. These comments contained information previously undisclosed. For example, in the USFWS March 6, 2019 letter, the USFWS references that its Habitat and Population Evaluation Team analyzed the November 2018 layout and provides a number of conclusions from this analysis that were not previously provided. *See*, PU-18-344, Hearing Exhibit No. 45, Docket No. 104, Attachment, pg. 1. Moreover, the agencies did not appear at the Projects’ hearing and were unavailable for questioning on any of their comments in this matter—which denied Burke Wind due process by an inability to cross examine agency witnesses. For these reasons, the Commission should give the agencies’ comments little weight or credibility.

In sum, Burke Wind has been responsive to the agencies’ concerns, and has done this at every stage of developing and siting the Projects. Burke Wind is committed to continuing this coordination in the most collaborative way possible.

X. Wind Energy Guidelines

As part of this agency coordination, Burke Wind implemented the USFWS voluntary *Land-Based Wind Energy Guidelines* (“WEGs”). The WEGs are a multi-tiered decision-making framework designed to guide wind developers in an iterative process to address potential adverse impacts to species of concern and their habitats during siting, construction, and operation of a wind facility. The wildlife agencies acknowledge that Burke Wind has made significant efforts to reduce its environmental footprint, but disagree with Burke Wind’s use of the WEGs. PU-18-344, Docket Nos. 103-104. While use and application of the WEGs is voluntary, Burke Wind fully incorporated the WEGs into its siting process and has used this process to avoid, minimize, and mitigate adverse impacts throughout project design. *See*, PU-18-344, Docket No. 129, Wells Testimony, Part 2, pgs. 45-46. Although the agencies assert Burke Wind did not adequately apply the WEGs from project inception, they have failed to provide specific examples of any shortcomings. Burke Wind’s entire package of avoidance, minimization, and mitigation measures to address Project impacts demonstrates that Burke Wind has indeed complied with the WEGs. *See*, PU-18-344, Docket No. 129, Wells Direct, Part 1, pg. 141.

The WEGs are not a zero-sum game. That is, if a particular decision point is reached, the WEGs do not require one default outcome as alluded to by the agencies. *See* Docket No. 129, Wells Testimony, Part 2 pgs. 42-43, 45-46. Rather, as shown in the WEG Decision Flowchart that is provided as Attachment 6, the WEGs consist of a multi-tiered process, in which *each tier* contains multiple decision points to assess avoidance, minimization, and mitigation options to address project impacts. *Id.* Attachment 6 clearly illustrates the various multi-level decision-making and action alternatives available to address potential adverse project impacts throughout project development.

As Dr. Wells testified, Burke Wind’s siting process followed this multi-tiered process: “[T]he three pre-construction tiers described in the 2012 USFWS Wind energy guidelines. These three tiers include progressive levels of decision-making that begin in tier one with desktop landscape-scale data, move to tier two with site visits and end in tier three with site-specific field studies. The WEGs describe decision points after each tier that relate to using data to assess whether potential species of concern are or could be present, the predicted probability of significant adverse impacts and whether any potential impacts can be avoided, minimized, or mitigated. Decision outcomes at each tier include choices such as abandoning further development of the site, gathering site-specific data to address uncertainty, and/or modifications of the project to avoid impacts or mitigating any remaining adverse impacts. Burke Wind considered these outcomes at each tier and elected to proceed with development because impacts could be sufficiently avoided, minimized or mitigated.” Docket No. 129, Wells Testimony, Part 1, pg. 115-116. For these reasons, Burke Wind fully implemented the WEGs throughout design and siting of the Burke Wind Project and appropriately minimized any potential adverse impacts.

XI. Specific Mitigation Measures and Voluntary Offset Package

As described throughout Burke Wind’s studies, surveys, application filings, testimony, and within this Post-Hearing Brief, the Projects’ impacts have been avoided, minimized, and

mitigated through Burke Wind's extensive siting efforts and application of the WEGs. A description of these mitigative measures is provided as Attachment 1.

In addition to these significant measures, Burke Wind has also voluntarily elected to provide a mitigation package to address any remaining residual impacts, including to account for the agencies' calculations of indirect impacts. PU-18-344, Exhibit No. 46, Docket No. 105. Burke Wind's proposed voluntary offset package is intended to further mitigate potential native habitat impacts to benefit waterfowl and wetland-associated birds that may use these habitats. Project impacts have been further reduced by Burke Wind's additional commitment to eliminate all temporary and permanent wetland impacts. To date, Burke Wind continues to actively engage the wildlife agencies with respect to discussion and assessment of residual impacts and associated voluntary mitigation.

XII. Conclusion

In conclusion, the totality of evidence Burke Wind has presented to the Commission as provided by its Applications, supporting studies and reports, witness testimony, and this Post-Hearing Brief, demonstrates Burke Wind meets the Commission's requirements for approval of the Projects. In particular, Burke Wind has demonstrated that the Projects will not adversely impact the Commission's siting criteria and that Burke Wind has adequately minimized adverse impacts. Burke Wind's commitment to minimize adverse impacts is further evidenced by its elimination of all impacts to wetlands, regardless of their jurisdictional status, which addresses the Commission's most significant remaining issue identified at the May 13 work session.

Burke Wind therefore respectfully requests the Commission approve the Projects, including the additional refinements addressed in this Post-Hearing Brief, and issue the requested certificates.

Dated this 24th day of May, 2019.

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CERTIFICATE OF SERVICE

Casey A Furey, counsel of record for Burke Wind, LLC hereby certifies that on this 24th day of May 2019, she filed the Post-Hearing Brief of Burke Wind, LLC with Attachments 1-6 electronically with the North Dakota Public Service Commission at ndpsc@nd.gov.

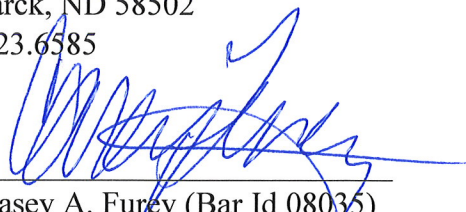
Copies of the Post-Hearing Brief of Burke Wind, LLC with Attachments 1-6 were also electronically served upon the following persons:

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