

GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of September 9, 2019 (the “**Effective Date**”), is made by NORTHERN STATES POWER COMPANY, a Minnesota corporation (“**Guarantor**”), in favor of the NORTH DAKOTA PUBLIC SERVICE COMMISSION (“**Commission**”).

RECITALS:

- A. WHEREAS, Guarantor plans to operate the Foxtail Wind Project (the “**Project**”) in Dickey County, North Dakota which consists of one or more wind turbines and tower equipment;
- B. WHEREAS, obligor is required to provide to Commission financial assurance supporting its obligation to decommission the Foxtail Wind Project pursuant to Section 69-09-09-08 of the North Dakota Administrative Code (the “**Statute**”);
- C. WHEREAS, Guarantor will directly or indirectly benefit from the Project; and
- D. WHEREAS, Guarantor wishes to issue the Guaranty to Commission to satisfy the terms of the Statute.
- E. NOW THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipts and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Commission as follows:

* * *

- 1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing to Commission under the Statute on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under the Guaranty shall be subject to the following limitations:
 - (a) Notwithstanding anything herein to the contrary, the maximum aggregate obligation and liability of Guarantor under the Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed Twenty Million Eight Hundred Ninety Three Thousand Seven Hundred Eighty Six U.S. Dollars (U.S. \$20,893,786) (the “**Maximum Recovery Amount**”).
 - (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments due and owing, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Commission (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). In no event, however, shall

Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. **DEMANDS AND PAYMENT.**

- (a) If obligor fails to pay any Obligation to Commission when such Obligation is due and owing (an “**Overdue Obligation**”), Commission may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to the Guaranty (a “**Payment Demand**”).
- (b) Guarantor’s obligation hereunder to pay any particular Overdue Obligation(s) to Commission is conditioned upon Guarantor’s receipt of a Payment Demand from Commission satisfying the following requirement: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand and the specific date(s) upon which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 8 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirement specified in Section 2(b) above, Commission shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term “**Business Days**” shall mean all weekdays (i.e. Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the the State of North Dakota.

3. **REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Minnesota and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration of filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of the Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor’s rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which it is or may be entitled.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Commission.

6. **WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of Guaranty:

(a) Except as required in *Section 2* above, Guarantor hereby waives (i) notice of appearance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against any other person, or to require that Commission seek enforcement of any performance against any other person, prior to any action against Guarantor under the terms hereof.

(b) No delay by Commission in the exercise of (or failure by Commission to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Commission may; (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions, or other alterations of the Obligations); (ii) release any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **TERMINATION.** Unless terminated earlier, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately at 11:59:59 Central Prevailing Time October 1, 2049; *provided, however,* that no such termination shall affect Guarantor's liability with respect to any Obligation incurred prior to the time the termination is effective, which Obligation shall remain subject to the Guaranty.

8. **FINANCIAL CONDITION.** Guarantor will promptly provide the Commission a copy of any notice it is required to provide to Guarantor's lenders under its credit facility agreement as then in effect related to a default or event of default as defined in such agreement.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called ("**Notice**") by Commission to Guarantor, or by Guarantor to Commission, as applicable, shall be in writing and may be delivered either by (i) U.S. Certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be

delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Commission, as applicable, to the other in accordance with the requirements of this Section 8):

<u>TO GUARANTOR:</u> *	<u>TO COMMISSION:</u>
NORTHERN STATES POWER COMPANY 414 Nicollet Mall Minneapolis, Minnesota <u>Attn:</u> Treasurer	North Dakota Public Service Commission 600 East Boulevard Avenue Bismarck, North Dakota 58505 <u>Attn: Dept. 0408</u>
[Tel: (612-215-5381 —for use in. Connection with courier deliveries]-	[Tel. (701) 328-2400—for use in connection with courier deliveries]

Any Notice given accordance with this Section 8 will (i) if delivered during the recipient’s normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipients’ normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient’s normal business hours on the next Business Day after such deliver.

11. **MISCELLANEOUS.**

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of North Dakota, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Commission and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Commission. Commission may not assign its rights or benefits under the Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Commission and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in the Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing and singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term “person” as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company,

trust, unincorporated association, or government (or any agency or political subdivision thereof).

- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Commission (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
 - (i) consents and submits to the exclusive jurisdiction of the North Dakota District Court, Burleigh County for the purpose of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transaction contemplated hereby brought by Commission, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named court, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on September 9, 2019, but it is effective as of the Effective Date.

NORTHERN STATES POWER COMPANY

By: Sarah W. Seong

Name: Sarah W. Seong

Title: VP and Treasurer