

PC 09-1448

Rice, Robin (PUC)

From: Katherine_Eckel@fws.gov
Sent: Friday, April 29, 2011 2:09 PM
To: staff, cao (PUC)
Subject: USFWS comments on DEIS for Xcel Energy Hampton-Rochester-La Crosse Transmission Line
Attachments: USFWS comments Hampton Rochester LaCrosse DEIS.pdf

Please find attached the US Fish and Wildlife Service's comments on the DEIS for the Xcel Energy Hampton-Rochester-La Crosse Transmission Line Project.

This letter has also been emailed directly to Matthew Langan, and the original copy will follow via U.S. Mail.

(See attached file: USFWS comments Hampton Rochester LaCrosse DEIS.pdf)

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United States Department of the Interior

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April 29, 2011

Matthew Langan
State Permit Manager
Minnesota Office of Energy Security
Energy Facility Permitting
85 7th Place East, Suite 500
St. Paul, Minnesota 55101

Dear Mr. Langan:

This letter constitutes U.S. Fish and Wildlife Service's (Service) comments on the Draft Environmental Impact Statement regarding the application by Xcel Energy for a route permit for the Hampton-Rochester-La Crosse 345 kV and 161 kV Transmission Line Project (DEIS). Our comments focus on four areas of primary concern to the Service with regard to the proposed project – lands and waters that are part of the National Wildlife Refuge System; endangered and threatened species; bald eagles (*Haliaeetus leucocephalus*); and migratory birds in general.

Upper Mississippi River National Wildlife & Fish Refuge

All three river crossings proposed in the DEIS would use existing Upper Mississippi River National Wildlife & Fish Refuge (Refuge) rights-of-way (ROW). Of them, the Alma crossing is expected to have the least impact to the Refuge and wildlife because the least amount of Refuge land is involved at this narrowest crossing of the proposed sites.

Regulations governing the compatibility of the establishment and expansion of Refuge ROWs allow only minor expansions to ROWs under certain conditions (50 CFR §26.41 (c)). These regulations further narrow the number of viable alternatives proposed in the DEIS when they are considered. The Alma ROW is the only ROW wide enough to accommodate the transmission line configuration that would likely have the least impact to birds and meet the conditions of 50 CFR §26.41 (c). The Service seeks a balance between expansion of the ROW, minimizing potential avian impacts through transmission line configuration, and the need for mitigation for lost habitat in the event of a minor adjustment to the existing ROW.

Section 7.8.6 does not cite the fact that in January, 2010, the Upper Mississippi River Floodplain Wetlands, including the national wildlife refuge and adjacent state-managed areas, including the McCarthy Lake Wildlife Management Area, were designated as "wetlands of international significance" under the Ramsar Convention, an international treaty that provides a framework for scientific exchange and cooperative conservation. Although Ramsar designation does not in any way restrict existing management authority or decision-making ability on the designated wetlands, it helps justify accelerated efforts to understand ecological functions, balance sometimes competing demands, and demonstrate wise resource management.

Threatened and Endangered Species

Minnesota dwarf trout lily (*Erythronium propullans*) and prairie bush clover (*Lespedeza leptostachya*) – listed as endangered and threatened, respectively under the Endangered Species Act of 1973, as amended – each occur within the ROW or within one-mile of at least one route alternative, as described in the DEIS. Disturbance of forested or grassland areas that contain these species could affect them directly or indirectly by facilitating soil erosion and invasion by harmful exotic plants. Therefore, avoid direct or indirect disturbance of forested areas that contain Minnesota dwarf trout lily and of grassland areas that contain prairie bush clover. If such impacts appear unavoidable, coordinate with our office and Minnesota Department of Natural Resources at the earliest possible opportunity.

The DEIS (Section 8.1, p. 87) states that “Impacts to dwarf trout lily... could be minimized by avoiding or spanning wooded floodplains and river terraces.” Minnesota dwarf trout lily also occurs in “rich *north-northwest or northeast-facing slopes* (emphasis added) dominated by maple-basswood stands” (Sather, N. 2009. Minnesota Dwarf Trout Lily Recovery Activities 2008. Minnesota Department of Natural Resources, St. Paul, MN. 26 p.). Therefore, we recommend also planning to span these types of forested habitats where the proposed project crosses through the range of Minnesota dwarf trout lily. See <http://www.fws.gov/midwest/Endangered/section7/s7process/plants/mdtl/mdtlrangemap.html> for further information regarding the known and potential range of Minnesota dwarf trout lily in Minnesota.

The DEIS (Section 8.1, p. 87) states that “Impacts to the prairie bush clover ... could be minimized by choosing one of the P route alternatives (except 1P-009).” If one of the alternatives that may impact prairie bush clover is selected, please coordinate with our office and with Minnesota Department of Natural Resources at the earliest possible opportunity to avoid or minimize adverse effects to this species.

Bald Eagles and Other Migratory Birds

As recognized in the DEIS, take of bald eagles and golden eagles (*Aquila chrysaetos*) is prohibited by the Bald and Golden Eagle Protection Act (BGEPA). Under BGEPA, take means pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb. Take is prohibited even if it results from, but is not the purpose of, carrying out an otherwise lawful activity.

According to the DEIS (Section 8.1, p. 89), “Impacts to bald eagles could be minimized by choosing one of the P route alternatives (except 1P-009).” It is important to note, however, that bald eagles may construct new nests within route alternative corridors before construction begins. In addition, the project may result in the disturbance of nesting, foraging, or roosting bald eagles or other forms of take even if the alternative most favorable to eagles is selected. In the National Bald Eagle Management Guidelines (US Fish and Wildlife Service. 2007), the Service recommends siting transmission utility lines away from nests, foraging areas, and communal roost sites in order to avoid collisions, and to bury utility lines in important eagle areas.

To ensure that locations where project activities may disturb nesting bald eagles are completely and correctly described, it will be necessary for the applicant to develop accurate and up-to-date information regarding the precise locations of bald eagle nests and other Important Eagle Use Areas (see below) in proximity to proposed power line routes.

Bald eagles typically complete construction of new nests in central and southeastern Minnesota by March 31. Therefore, we recommend conducting aerial surveys for bald eagle nests during the month of April that immediately precedes any planned construction activities. If construction on a power line segment is planned to begin in July, for example, an analysis of potential impacts to nesting bald eagles should be based on an aerial survey conducted during the immediately preceding April. The Implementation Guidance for Eagle Take Permits under 50 CFR 22.26 and 50 CFR 22.27 indicates that because breeding home ranges of bald eagles can extend up to two miles from the nest, new potentially lethal infrastructure should be sited at least two miles away from Important Eagle Use Areas. Therefore, we recommend surveying all areas within two miles of proposed power line routes. Nests of other migratory birds, especially other raptors and colonial nesting waterbirds [e.g., great blue heron *Ardea herodias*], should also be noted.

Nests are only one component of Important Eagle Use Areas, which are defined under Code of Federal Regulations (50 Section 22.3) as, "an eagle nest, foraging area, or communal roost site that eagles rely on for breeding, sheltering, or feeding, and the landscape features surrounding such a nest, foraging area, or roost site that are essential for the continued viability of the site for breeding, feeding, or sheltering eagles." Activities that disturb roosting or foraging eagles are prohibited under the Bald and Golden Eagle Protection Act. Therefore, we also recommend surveys be completed for foraging, roosting, or wintering areas within two miles of all potential line placements. Use of these locations by bald eagles can change throughout the year; therefore, we recommend a fall (pre-ice-up) and a winter (post-ice-out) survey to determine the location and use of these areas by bald eagles. Activity of other migratory birds should also be noted at this time, including waterfowl and water bird concentration areas.

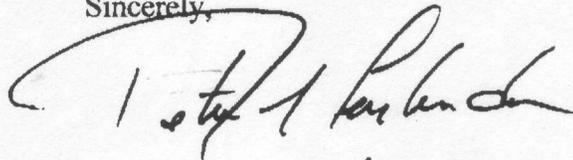
We recommend that the applicant, Xcel Energy, coordinate with the Service regarding the design and subsequent results of all bald eagle/migratory bird surveys. It will be necessary to determine whether survey results and other available information may contain information regarding potential impacts to bald eagles or other migratory birds that may not have been previously considered or sufficiently addressed by the project's proposed mitigation. In addition, the Service may also recommend that the applicant apply for a permit under BGEPA. (For further information regarding these permits, see our website – <http://www.fws.gov/midwest/MidwestBird/EaglePermits/index.html>.)

The DEIS (Section 7, p. 47) states that "The structure designs proposed for this project appear to be consistent with" resources developed by the Avian Power Line Interaction Committee (APLIC). According to APLIC, an updated edition of one of these resources – *Mitigating Bird Collisions with Power Lines: The State of the Art in 1994* – will be available in 2011. We assume that this updated document will contain improved measures to mitigate bird collisions.

When it is released by APLIC, we recommend that Excel Energy and the Public Utilities Commission review it to determine whether the project's structure designs are consistent with any changes from the 1994 document and, if not, to modify any structure designs to further reduce the likelihood of bird collisions, as appropriate.

For further information regarding these comments and for future coordination regarding the proposed project, please contact Phil Delphey at (612) 725-3548, ext. 2206.

Sincerely,



Tony Sullins
Field Supervisor

cc: Mr. Rich Frietsche, Upper Mississippi River National Wildlife & Fish Refuge
(UMRNWFR), Winona, MN
Mr. Jim Nissen, La Crosse District, UMRNWFR
Ms. Mary Stefanski, Winona District, UMRNWFR