

April 4, 2012

Suzanne Steinhauer
State Permit Manager
Minnesota Department of Commerce
Office of Energy Security
85 7th Place East, Suite 500
St. Paul, Minnesota 55101

Re: Black Oak and Getty Wind Farms Draft Avian and Bat Protection Plan Review
Stearns County, Minnesota
PUC Docket Nos. IP-6853/WS-10-1240 and IP-6866/WS-11-831
FWS TAILS #32410-2009-FA-0145 and #32410-2010-CPA-0068

Dear Ms. Steinhauer:

This is in response to the Department of Commerce (DOC) request for comments on the Draft Avian and Bat Protection Plan (Draft ABPP) for the proposed Black Oak and Getty Wind Farms in Stearns County, Minnesota. The proposed projects include the installation of wind turbines, and associated infrastructure including roads, transmission lines, and staging areas.

This letter is not intended to replace previous comments and recommendation the Service provided to DOC staff, the project developers, or the project developer's consultants regarding the proposed Black Oak and Getty Wind Farms. Our recommendations in this letter are intended to assist DOC staff in making informed decisions regarding recommendations to carry forward to the Public Utility Commission (PUC).

Section 4.3 Endangered Species Act of 1973

The second sentence of this section indicates that "consultation may be either information or formal." "Information" should be changed to "informal" to make this statement accurate. The first sentence on page 9 indicates that Section 9 of the Endangered Species Act (ESA) provides protection to rare and migratory wildlife; migratory nature of a wildlife species is not a specific requirement to afford a species protection under ESA.

Section 4.4 Migratory Bird Treaty Act

The last sentence of this section indicates extensive, early consultation with wildlife agencies has aided in the reduction of potential risk of Migratory Bird Treaty Act (MBTA) prosecution in the future. The Service recommends that this statement be removed or revised, as the simple action

of early consultation may not reduce a project's potential for prosecution in the future. The Service's Law Enforcement Office holds the prosecution authority under the MBTA, and will coordinate with our office should any prosecution be considered regarding the proposed projects.

Section 8.1.2 Raptor/Large Bird Survey

This section indicates that HDR will continue to monitor eagle activity and perform more eagle surveys in the fall and winter of 2011. The Service would like clarification that this statement was intended to specify that eagle monitoring and surveys would be continued into 2012.

Section 9.1 Minimize Disturbance

The second paragraph of this section focuses on the reduction of the spread of invasive plant species. The Service recognizes and greatly appreciates the efforts proposed by the project proponent. We recommend that the project proponent layout additional vegetation establishment measures, *i.e.*, native seed mixtures to be utilized, maintenance activities, mowing and spraying, which may be necessary to reduce invasive species competition while re-establishing the native plant population. Due to the migratory bird species and rare native prairie butterfly species utilizing native prairies and other grasslands within the proposed project areas, the Service strongly encourages the avoidance of direct and indirect impacts to grasslands.

Section 9.7 Traffic Plan

The last sentence of the first paragraph indicates that carrion killed by collisions with vehicles will be removed from roads constructed to maintain or access project facilities. The Service recommends that this be expanded to include any carrion resulting from collisions with any project construction equipment or vehicles hauling equipment, and this should include public roads and project roads.

Section 10.3 Post Construction Avian and Bat Monitoring

This section references the Prairie Rose Wind Farm at various points. The Service recommends that this section be edited while the Final ABPP is being completed to reduce confusion.

Section 10.3.1 Wildlife Carcass and Injury Discovery Process

The Service recommends that bald eagles be specified as a species to be reported within 24 hours on the Dead and Injured Bird flowcharts outlined in the Draft ABPP.

Section 10.3.2 Reporting Protocol

The Service would like to be provided with a copy of submitted quarterly reports pertaining to the Black Oak and Getty Wind Projects.

The last paragraph of this section is confusing. It states that in the event that five or more dead or injured non-protected avian or bat species are discovered, the USFWS shall be notified within

24 hours. All migratory bird species listed at 50 CFR 10.13 are protected under MBTA. Providing data on “non-protected” species is useful, and should be included in the quarterly reporting. The Service recommends that this paragraph be revised to clarify the reporting process as it pertains to protected avian species, taking MBTA into consideration.

Section 10.4 Quality Control and Adaptive Management

The Service recommends that bald eagle-specific sub-section be added to the ABPP. This sub-section should, at a minimum, address proposed future eagle surveys, plans to address newly constructed nests within or in close proximity to the project sites, and plans to address other Important Eagle Use Areas -- migratory routes, winter congregation areas or foraging areas within the project sites.

General Recommendations

The Service recommends that a section or sub-section be added to the Draft ABPP stating that consultation with the Twin Cities Field Office will be re-initiated should new data become available on currently listed species, or if any new species are listed and provided protection under ESA.

On March 23, 2012, the Service released our final version of our Land-Based Wind Energy Guidelines, and can be found at <http://www.fws.gov/windenergy/>. The Service’s latest version of the Draft Eagle Conservation Plan can be found at http://www.fws.gov/windenergy/eagle_guidance.html. We recommend that the project proponent utilize these guidelines as they move forward with the planning and operation of these proposed projects.

Thank you for the opportunity to provide comments on this proposed project. Please contact me at (612) 725-3548, ext. 2201, or Rich Davis, Fish and Wildlife Biologist, at (612) 725-3548, ext. 2214, if we can be of further assistance.

Sincerely,

Tony Sullins
Field Supervisor

cc: Jamie Schrenzel, MN DNR
Scott Glup, USFWS Litchfield WMD