



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



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Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505

PUBLIC SERVICE COMMISSION

Dear Commissioners:

The U.S. Fish and Wildlife Service (Service) has reviewed the September 10, 2008, Notice of Filing and Notice of Hearing for Case No. PU-07-54, regarding the proposed Just Wind - Wind Farm Development near Napoleon, North Dakota.

The Service, in an April 4, 2008, letter, provided comments and recommendations to avoid, reduce, and mitigate potential impacts to fish and wildlife resources that may be adversely affected by the proposed wind development project. In general, wildlife resources and issues that warrant consideration during project planning for a wind energy facility include: migratory birds (e.g., potential for habitat fragmentation, collisions and electrocutions); federal land interests; wetlands, prairie, and woodland habitats; threatened and endangered species; and monitoring, research, and assessment.

Adequate consideration for avian resources early in wind power site evaluation can minimize impacts. Although current wind turbine technology and proper siting can help to minimize the incidence of avian death due to blade and tower strikes, the potential for direct mortality of some migratory birds remains. Wind power developers, in concert with the Service, can cooperatively ensure that projects proceed with as little impact to migratory birds as possible. This can be accomplished by gathering information on avian resources as they relate to project siting and by implementing measures to minimize impacts to migratory birds from the construction and operation of the wind facility. The Service's Interim Wind Turbine Siting Guidelines were enclosed with our letter to assist Just Wind in planning a project that would minimize the potential to impact bird and bat resources. We encouraged Just Wind to conduct a Potential Impact Index (PII) analysis to assist in the selection of a wind power site that minimizes the potential to impact migratory birds. To our knowledge, the PII analysis was not used as a planning tool for selecting the proposed project site.

To minimize the electrocution hazard to birds, the Service recommended that new or updated overhead power lines be constructed in accordance with the current guidelines for preventing raptor electrocutions. To increase power line visibility and reduce bird fatalities resulting from collisions with power lines, the Service recommended that new power lines be marked with state-of-the-art line marking devices.

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Letter Regarding Minimization of Impacts to Avian Resources

The Service provided Just Wind with a list of federally threatened and endangered species that may occur within the proposed project's area of influence, including the endangered whooping crane. The Aransas Wood Buffalo Population (AWBP) of whooping cranes is the only self-sustaining migratory population of whooping cranes remaining in the wild. These birds breed in the wetlands of Wood Buffalo National Park in Alberta and the Northwest Territories of northern Canada, and spend winters on the Texas coast. Whooping cranes in the AWBP annually migrate through North Dakota during their spring and fall migrations.

Endangered whooping cranes may be present in the proposed project area. The proposed site is located within a 90 mile wide migration corridor that includes 75% of all confirmed whooping cranes sightings in North Dakota. The presence of suitable roosting and feeding habitat for whooping cranes in the project area, and confirmed whooping crane sightings in the project vicinity document the potential for whooping crane presence in the proposed project area. Just Wind's proposed wind energy project has the potential to impact whooping cranes during their annual spring and fall migration through North Dakota. Impacts may be direct (e.g. collision mortality) or indirect (e.g. avoidance of the site resulting in cranes seeking alternate stopover habitat). The interactions of whooping cranes with wind turbines and wind farms are currently uncertain, although it is suspected that these large birds with relatively low maneuverability may be susceptible to mortality via collisions with turbines. Currently, collisions with power lines are the greatest known source of mortality for fledged whooping cranes, and have accounted for the death or serious injury of at least 46 whooping cranes since 1956.

The Service believes that the proposed project has the potential to affect listed species because of, but not limited to, the presence of migrating whooping cranes in the project area. Section 10(a)(1)(B) of the Endangered Species Act (ESA), (16 U.S.C. 1531 et seq.) allows non-Federal parties planning activities that have no Federal nexus (a Federal nexus exists whenever an activity is conducted, funded, or licensed or permitted by a Federal agency), but which could result in the incidental taking of listed animals, to apply for an incidental take permit (ITP) prior to project construction. The permit application must include a habitat conservation plan (HCP) that lays out the proposed actions, a determination of the effects of those actions on affected federally-listed fish and wildlife species and their habitats (often including proposed or candidate species), and a description of the measures that the applicant will take to avoid, minimize, and mitigate adverse effects.

Although we have had several conversations with Just Wind and their consultants over the past several months, to date we have received no formal response to our April 4th letter. Therefore, we do not know how Just Wind intends to construct their proposed project, nor how they intend to comply with the Federal laws that we implement; namely, the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act. With respect to the ESA, until such time as a project proponent whose activities could result in take of a threatened or endangered species produces an HCP, submits that HCP and application for a Section 10 permit, and receives a permit to take, the responsible individuals or entity would be liable under

the enforcement provisions of the ESA for any unauthorized take of a whooping crane or other federally-listed species.

Thank you for the opportunity to comment on the Notice of Filing and Notice of Hearing. If you require further information, please contact Terry Ellsworth of my staff, or contact me directly, at (701) 250-4481, or at the letterhead address.

Sincerely,

Handwritten signature of Jeffrey K. Towner in black ink.

Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

cc: Project Leader, Kulm WMD
Just Wind, Mound, MN
Houston Engineering, Inc., Fargo
(Attn: M. Aanenson)