

Dear Commissioners

In regards to Case No. PU-07-54

Just Wind, Logan County Wind Farm- Siting application

RECEIVED

JAN 22 2010

Under Orders

PUBLIC SERVICE COMMISSION

Commission orders #13

13. Just Wind shall file a copy with the Commission of its USFWS approved Habitat Conservation Plan and resulting Incidental Take Permit issued under Section 10 of the federal Endangered Species Act.

Just Wind and its financial group are seeking clarification, that it is ok to start construction prior to the completion of the Habitat Conservation Plan and the receipt of the Incidental Take Permit from USFWS.

The Regional HCP that is being developed through AWEA is at least 2 years out. Just Wind is under way on the development of its own site specific HCP and will be working together with the local USFWS office on recommendations and approval. (See attached)

Just Wind believes they could finish the site specific HCP in 9-12 months.

In visiting with Ms. Bendish, and Ms. Jeffcoat-Sacco, they advised Just Wind to send a request for clarification as the order does not state prior to construction. If the Commission could please send a letter to clarify its approval to start construction prior to the completion of the HCP it would be greatly appreciated.

Thank you for your time

Sincerely

Don Metzger

Director of Development

Just Wind LLC

Dear Terry

Pursuant to our recent communication regarding the Logan County Wind Farm (LCWF), Just Wind is providing the U.S. Fish and Wildlife Service (USFWS) with a status update and our proposed plans for moving forward with the LCWF project. Just Wind has completed several wildlife studies and is in the process of developing avoidance and minimization measures to be implemented at the LCWF to minimize potential adverse impacts to avian species. Just Wind is seeking confirmation from the USFWS that these measures are appropriate and would minimize impacts to avian species protected by the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), and the Endangered Species Act (ESA), particularly the Whooping crane (*Grus americanus*).

Western Plains Consulting (WPC) completed spring and fall avian point count surveys for LCWF in 2009. A report summarizing the results of these surveys, and others, was provided to the USFWS on January 20, 2010 for your review and comment. Other surveys completed to date for the project include; a fall 2008 sandhill crane survey, a raptor nest survey, sharp-tailed grouse lek survey, Whooping crane habitat suitability analysis and a fall 2009 sandhill crane survey.

As recommended by the USFWS, Just Wind is moving forward with preparation of an Avian Protection Plan (APP). WPC is developing the APP and would like to discuss at a later date the primary elements of the plan before submitting a draft copy for your review. The Just Wind APP will provide additional details regarding avian and bat protection measures to be implemented at the LCWF such as; additional pre-construction surveys, potential site design modifications to reduce mortality risk to birds and bats, post-construction fatality monitoring, adaptive management measures, etc.

In regards to listed species, Just Wind recognizes that the project is located within the whooping crane migration corridor and may contain crane stopover habitat within the project lease area. Just Wind has not observed whooping cranes in the project area but the presence of sandhill cranes is indicative that there is potential for stopover habitat. Although the LCWF has no federal nexus to trigger Section 7 consultation under the ESA with the USFWS, Just Wind is committed to going through the Section 10 process to develop a Habitat Conservation Plan (HCP) and obtain an incidental take permit (ITP). While developing the HCP, Just Wind plans to implement appropriate measures to avoid and minimize potential adverse impacts to whooping cranes during the construction and operation of the LCWF although it does not anticipate take will occur. Just Wind is taking the following steps to ensure that its actions from construction and operation of the LCWF do not result in a violation of Section 9 of the ESA.

- Avoid the construction of new overhead power lines - all power collection lines would be buried in the project area.
- Mark guy wires on meteorological towers with bird diverters or other visual marking devices to deter wildlife collisions.
- Require contractors and construction personnel to modify or curtail construction activities within 1.0 mile if whooping cranes are observed onsite during the construction phase of the project. The cranes would be undisturbed until they are no longer observed within the wind farm boundaries in order to minimize the potential for disturbance, displacement, and harm of roosting and foraging whooping cranes.

- Have 1-2 trained personnel on the site during spring and fall migration seasons for 3 years post-construction in an attempt to observe whooping cranes and shut down specific turbines located within 1 mile of the birds, until such time as the birds are no longer observed in the area. Daily onsite biological monitoring during construction activities and wind farm operations (3 years post-construction) by bird surveyors, meeting recommended Service qualifications for training and experience, will document avian migration use of the project area (in the spring, April 1 to May 15, and fall, September 10 to October 31) or while cranes are confirmed to be present in the area.
- During the spring and fall whooping crane migration seasons, conduct mortality monitoring for 3 years post-construction by biologists and subsequently by trained maintenance personnel to detect any whooping crane or sandhill crane (surrogate species) mortalities that may occur on the project area.
 - Post construction mortality monitoring would be designed to identify individual turbines that contribute to avian mortality and that may involve further curtailment of specific WTG during the migration period. This management approach would further minimize the potential for whooping crane mortality.
- Provide annual reports each year for three years post construction, Reports would address compliance with the whooping crane monitoring, bird/bat monitoring, and any other studies

Just Wind is open to considering other avoidance, minimization, and mitigation measures for the LCWF and would like to meet with you to discuss your recommendations. Other measures that may avoid minimize, or mitigation any adverse effects of the LCWF could include minimizing clearing of native prairie and protecting or enhancing whooping crane stop over habitat in areas outside of the LCWF such as contributions for USFWS easement programs, The Nature Conservancy or Ducks Unlimited.

As discussed in past meetings, Just Wind plans to start construction of the LCWF in 2010. We recognize that this does not allow for the timely development and approval of a HCP prior to initiation of construction. However, implementation of the conservation measures described above demonstrates Just Wind's commitment to avoiding and minimizing impacts to protected species. Just Wind is committed to the development of a whooping crane HCP for LCWF but the HCP would not be completed prior to construction at LCWF.

In cooperation with the USFWS, Just Wind would like to determine whether it should develop its own project specific HCP or participate in the programmatic HCP led by AWEA. It is Just Wind's understanding that it will be approximately two years until this HCP is completed. Due to the timeline of the LCWF, it may be in Just Wind's best interest to develop a project-specific HCP.

Just Wind appreciates the cooperation we have received from the local USFWS field office staff to date and anticipate this will continue as we move forward with this project. We are seeking confirmation from the USFWS that the conservation measures implemented by Just Wind during the construction and operation of the wind farm will avoid and minimize impacts to federally protected species.

A meeting has been scheduled for 9:00 am, January 28, 2010 at the Bismarck USFWS Office to discuss the conservation measures proposed in this letter and other recommendations the USFWS may have for the LCWF.

Regards,

Don Metzger

Director of Development

Just Wind LLC