



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501

APR 14 2008

RECEIVED

APR 16 2008

Mr. Allen Wynn
Assistant Project Manager
HDR Engineering, Inc.
4401 West Gate Boulevard, Suite 400
Austin, Texas 78745

PUBLIC SERVICE COMMISSION

Re: Proposed 230kV Transmission Line from
Luverne Wind Farm to Pillsbury Substation

Dear Mr. Wynn:

This letter is in response to your request dated March 10, 2008, for environmental comments regarding the proposed M-Power, LLC (M-Power) transmission line project. M-Power proposes to construct 13 miles of 230 kilovolt (kV) transmission line to transport power from M-Power's proposed Luverne Wind Farm to a proposed Ottertail Power Company and Minnkota Power Cooperative substation located northwest of Pillsbury, North Dakota. The project area is located in Barnes and Steele Counties, North Dakota. We offer the following comments under the authority of and in accordance with the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250), Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds", the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57), and the National Environmental Policy Act (NEPA) (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982).

The U.S. Fish and Wildlife Service (Service) holds certain resources in trust and manages them for the benefit of the American people. These resources include migratory birds, inter-jurisdictional fish, federally-listed threatened and endangered species of plants and animals and their habitats, and units of the National Wildlife Refuges system. When planning an activity, project proponents should give careful consideration to potential impacts to these trust resources and compliance with the laws mentioned above. Additional information is provided below.

Migratory Birds

Adequate consideration for avian resources early in the project planning process can help to minimize impacts to migratory birds. To minimize the electrocution hazard to birds, the Service, with support from the Rural Utilities Service, recommends that new or updated overhead power lines be constructed in accordance with the current guidelines for preventing raptor electrocutions. The recommended guidelines can be found in "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996". To increase power line visibility and reduce bird fatalities resulting from collisions with power lines, the Service recommends new power lines that cross or run adjacent to rivers or large wetlands be modified according to "Mitigating Bird Collisions with Power Lines: The State of the Art in 1994". Both publications can be obtained by writing or calling the Edison Electric Institute, P.O. Box 266, Waldorf Maryland 20604-0266, (1-800-334-5453) or visiting their website at www.eei.org.

Threatened and Endangered Species

A list of federally threatened and endangered species that may occur within the proposed project's area of influence is enclosed (enclosure 1). Section 10(a)(1)(B) of the ESA allows non-Federal parties planning activities that have no Federal nexus, but which could result in the incidental taking of listed animals, to apply for an incidental take permit. (A Federal nexus exists whenever an activity is conducted, funded, or licensed or permitted by a Federal agency). The application must include a Habitat Conservation Plan (HCP) laying out the proposed actions, determining the effects of those actions on affected federally-listed fish and wildlife species and their habitats (often including proposed or candidate species), and defining measures to minimize and mitigate adverse effects.

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 overwinter on the Texas coast. Whooping cranes in the AWBP annually migrate through North Dakota during their spring and fall migrations.

Endangered whooping cranes have been documented using roosting habitat in the vicinity of the proposed transmission line route. The proposed route is located outside the primary 180 mile-wide migration corridor that includes 95% of all confirmed whooping crane sightings in North Dakota (enclosure 2). The presence of suitable roosting and feeding habitat for whooping cranes along the proposed route, and confirmed whooping crane sightings, document the potential for whooping crane presence in the area. A new transmission line in this area has the potential to affect whooping cranes during their annual spring and fall migration through North Dakota. 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 does not believe that a determination of “no effect” is appropriate for the study area because of, but not limited to, the presence of migrating whooping cranes in this area. However, due to the project location outside of the main migration corridor with only 5% of all confirmed whooping crane sightings in North Dakota, the Service believes that with conservation measures included as part of the project, a determination of “may effect, not likely to adversely affect” for the whooping crane may be appropriate. Conservation measures to avoid or reduce potential impacts to whooping cranes include, but are not limited to: burying all new electrical transmission lines; if new lines cannot be buried, marking all new overhead transmission lines with visual marking devices such as aviation marker balls, swinging plates, spiral vibration dampeners, or swan flight diverters.

Fish and Wildlife Service Property Interests

The Service administers Waterfowl Production Areas owned in fee title as well as wetland and grassland easements throughout North Dakota. A review of Service realty records indicate Service property interests (fee title land highlighted in green, wetland easements highlighted in yellow) are located in the planning area (enclosure 3). The Service has an ongoing easement acquisition program and we recommend that you contact Mr. Ed Meendering, Supervisory Wildlife Refuge Specialist, Valley City Wetland Management District, 11515 River Road, Valley City, North Dakota 58072-9619, (701-845-3466), for more specific information relative to Service easements and up-to-date realty records.

Following are some suggestions and explanations of the various land interests the Service is responsible for in the proposed project area.

Wetland easements (yellow) are legal agreements with private landowners that permanently protect wetland basins from being drained, burned, leveled, or filled.

The primary responsibility in protecting these easements is to review all proposed uses to ensure that the requests are compatible with Service easement regulations and various laws and policies. Therefore, these comments and suggestions are made in an attempt to accomplish three goals: 1) avoid impacts to Service wetland easements in the project area as much as possible; 2) if unavoidable, ensure that any proposed turbine and associated infrastructure impacts (roads, buried collection lines, transmission lines, sub-stations, etc.) on any Service easement areas are kept to a minimum; and 3) investigate potential alternatives to eliminate or reduce impacts to easement areas to protect the integrity of the easement.

With these goals in mind, the Service offers the following comments:

There are fee title lands and wetland easement tracts in the proposed project area. You will need to contact the WMD office for specific information.

- **Wetland Easements:** The Service manages a number of wetland easements in the proposed project area. The National Wetlands Inventory (NWI) identifies many of the area's wetlands; however, many of the small, shallow temporary wetland basins may not be recognized on NWI photography. You should make all reasonable efforts to avoid facility placement and disturbance to wetlands protected by easement. If your plans indicate a proposal to locate project facilities on Service wetland easements, the Service will review aerial photography along with field inspections to review construction stakes to make sure all wetland basins are avoided. In addition, it is important to make sure that access roads do not alter individual wetland basins and their individual watersheds.
- **NEPA Review:** If Service lands are proposed to be impacted, the Service will be required to conduct an analysis of impacts and examine alternatives, pursuant to NEPA.

High Value Habitat Avoidance

The proposed project area is located in the Drift Prairie Glaciated Plains region of North Dakota and includes areas of native mixed-grass prairie. Since the 1800s, North Dakota has lost approximately 75-90 percent of its native grasslands, primarily due to crop production. The Service recommends avoiding construction or disturbance on native prairie areas.

Our review of NWI maps indicate that wetland areas are located within the project area. NWI data can be accessed directly by visiting their website at (wetlands.fws.gov). Section 404 of the Clean Water Act regulates placement of fill materials in certain wetlands. A Corps of Engineers' 404 permit may be required if fill material will be placed in aquatic sites including wetlands. Contact Mr. Dan Cimarosti, Regulatory Office, Corps of Engineers, 1513 South 12th Street, Bismarck, North Dakota 58504 (701-255-0015), to determine their permit requirements. If a 404 permit is required, the Service will provide recommendations on this project to the Corps.

Other high-value wildlife habitat types in North Dakota include wooded draws and riparian forests. We recommend that you avoid construction in the above habitat types whenever possible.

Construction activities should be conducted in a manner that will minimize impacts to the wildlife and the existing habitat in the project area. Where impacts are unavoidable, we recommend that you:

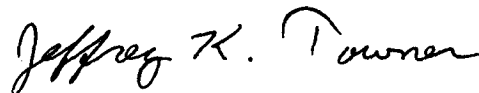
- Schedule construction for late summer or fall/early winter so as not to disrupt waterfowl or other wildlife during the breeding season (February 1 to July 15). If work is proposed to take place during the breeding season or at any other time which may result in the take of migratory birds or active nests, the Service recommends that the project proponent arrange to have a qualified biologist conduct a field survey of the affected habitats to determine the absence or presence of nesting migratory birds. If nesting migratory birds are found, we request you contact this office, suspend construction, or take other

measures, such as maintaining adequate buffers, to protect the birds until the young have fledged. The Service further recommends that field surveys for nesting birds, along with information regarding the qualification of the biologist(s) performing the surveys, and any avoidance measures implemented at the project site, be thoroughly documented and that such documentation be shared with the Service and maintained on file by the project proponent at least until such time as construction on the proposed project has been completed.

- Avoid construction in native prairie, if possible, and reseed disturbed native prairie with a comparable native grass/forb seed mixture. Obtain seed stock from nurseries within 250 miles of the project area to insure the particular cultivars are well adapted to the local climate.
- Locate poles and other construction to avoid placement of fill in wetlands along the route.
- Install and maintain appropriate erosion control measures to reduce sedimentation and water quality degradation of wetlands and streams near the project area.
- Replace unavoidable wetland losses with functionally equivalent wetlands.

Given the Service requirements and recommendations above, as well as possible unforeseen issues that may arise, we encourage you to build sufficient planning time for coordination with the Service into your project timeline. Thank you for the opportunity to comment. If you require further information as project planning proceeds, please contact Terry Ellsworth of my staff, or contact me directly, at (701) 250-4481, or at the letterhead address.

Sincerely,



Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosures (3)

cc: Supervisory Wildlife Refuge Specialist, Valley City WMD
Regulatory Office, Army Corps of Engineers, Bismarck
(Attn: D. Cimarosti)
ND Public Service Commission, Bismarck
Director, ND Game & Fish Department, Bismarck
(Attn: M. McKenna)

FEDERAL ENDANGERED SPECIES
FOUND IN
BARNES AND STEELE COUNTIES, NORTH DAKOTA

ENDANGERED SPECIES

Birds

Whooping crane (Grus Americana): Migrates through west and central counties during spring and fall. Prefers to roost on wetlands and stockdams with good visibility. Young adult summered in North Dakota in 1989, 1990, and 1993. Total population 140-150 birds.