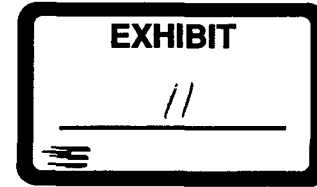




# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501



Dear Commissioners:

My name is Terry Ellsworth. I am a Fish and Wildlife Biologist for the U.S. Fish and Wildlife Service (Service) Ecological Services Office in Bismarck, North Dakota. Our office provided comments on June 18, 2008, to Sequoia Energy US Inc. through their project consultant, Westwood Professional Services, on the proposed Border Winds Energy Project. The United States Congress has directed the Fish and Wildlife Service and other Federal agencies to administer a number of environmental laws, regulations, and executive orders to protect the nation's fish and wildlife resources, such as the National Environmental Policy Act, Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, Endangered Species Act, and National Wildlife Refuge System Improvement Act of 1997.

The Fish and Wildlife Service supports the responsible development of renewable, sustainable energy sources, including wind energy. However, wind energy developments may present threats to wildlife and their habitats. In general, the wildlife resources and issues that warrant consideration during project planning include: migratory birds and bats (e.g., potential for habitat fragmentation, collisions, and electrocutions); Federal land interests; wetland, prairie, and woodland habitats; threatened and endangered species; and monitoring, research, and assessment. The Fish and Wildlife Service routinely provides technical assistance to developers to help avoid, reduce, and mitigate potential impacts to fish and wildlife resources that may be adversely affected by proposed wind development projects. Our recommendations include developing a voluntary Avian and Bat Protection Plan, in coordination with the Fish and Wildlife Service, as a tool the company can use to identify problem areas through mortality monitoring and reporting, outline means and methods to reduce identified impacts, and provide for follow-up review in an adaptive management approach.

From the information in the September 29, 2009, Public Service Commission (PSC) Notice of Filing and Notice of Hearing (Notice), it appears that the proposed Border Winds Energy Project was modified after our office provided comments to the company's consultants in our June 18, 2008, letter. The project that we reviewed at that time, as described in Westwood Professional Services' request for comments, consisted of a 100 MW project with 42 - 2.4 MW turbines in Rolette and Towner Counties. The PSC Notice states that Sequoia Energy US Inc. filed an application on October 24, 2008, for a certificate of site compatibility to authorize construction of a 150 MW project with 66 turbines in Rolette and Towner Counties. The Notice further states that the project application was revised on September 25, 2009, changing the project to be entirely within Rolette County. None of the proposed changes to the project were coordinated

with our office by the company; therefore, we have not had an adequate opportunity to review the modified project for potential impacts to fish and wildlife trust resources, and provide comments and recommendations to help avoid and minimize any potential impacts.

On October 30, 2009, our office received an email with an updated project map and a September 24, 2009, Pre-construction Avian Survey and Risk Assessment attached. The avian survey included information for a 10 week period, from April 3 - June 2, 2009. The conclusions of the survey and risk assessment indicate that the proposed project area has high waterfowl and raptor use compared to other wind farms that have been studied. This study and the results were not coordinated with our office, which would have allowed for our input to assist the project developer to avoid and minimize avian fatalities to the maximum extent practicable through project macrositing or operations.

Specific to the Migratory Bird Treaty Act, the Fish and Wildlife Service has developed the following policy. The Migratory Bird Treaty Act prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the Act has no provision for unintentional take, the Fish and Wildlife Service realizes that some birds may be killed by wind turbines or power lines, even if all reasonable measures to protect them are used. The Fish and Wildlife Service Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to minimize their impacts on migratory birds, and by encouraging others to enact such programs. It is not possible to absolve individuals, companies, or agencies from liability even if they implement avian mortality avoidance or similar conservation measures. However, the Office of Law Enforcement focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without regard for their actions or without following recommendations to avoid take. Because the project has been planned without our full involvement, any take of migratory birds, their eggs, or active nests due to construction or operation of this project is considered by the Fish and Wildlife Service as not having met the burden of the policy cited above.

Thank you for the opportunity to provide testimony on the Border Winds Energy Project.