

**Clark, Tony T.**

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**From:** Sederquist, Dave [dave.sederquist@xcelenergy.com]  
**Sent:** Monday, May 17, 2010 6:55 PM  
**To:** Cramer, Kevin; Clark, Tony T.; Kalk, Brian P.  
**Cc:** Nitschke, Darrell D.; Diller, Michael R.; Jeffcoat-Sacco, Illona; Lein, Jerry R.  
**Subject:** Purchase and Sale Agreement (PSA) Breach by enXco  
**Attachments:** Clear Day Bkgrd.JPG

Commissioners:

For your information, we recently sent a letter to enXco Development Corp. (developers of our Merricourt Wind Project) notifying them that they are in breach of certain sections of our Mericourt PSA, and we have notified them of a "Material Adverse Effect" as defined in the PSA as a result of this breach.

The breach is in relation to a situation described in a letter sent to enXco in February by the US Fish and Wildlife Service (USFWS). The USFWS had informed enXco that it did not appear they had properly considered alternative sites or the potential impacts to wildlife and their habitats in the selection of the Merricourt site (in particular, the USFWS is concerned the facility may threaten the migratory habits of the Whooping Crane). The USFWS recommended that construction of the project not commence until enXco had sought and received an "Incidental Take Permit" (if needed) from the USFWS as part of a Habitat Conservation Plan. The USFWS noted that the AWEA Programmatic Habitat Conservation Plan, of which enXco had joined, is not scheduled to be completed until 2013. This is after enXco's planned Dec. 31, 2011 in-service date for the facility, and hence the project may not be in compliance with relevant wildlife laws when it begins operating. This situation creates the potential for significant liability for Xcel Energy.

It is our intention to continue to fulfill our contractual obligations while this issue is in dispute, so there is no anticipated schedule impact of this issue, assuming all gets resolved and the project is able to proceed. If you have any questions, don't hesitate to contact me. Thank you.

**Dave Sederquist**  
**Xcel Energy**  
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E-mail re. Breach of PSA, USFWS issue