



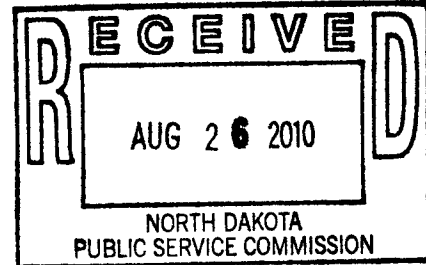
OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@nd.gov
www.nd.gov/oah

August 25, 2010



Ms. Illona Jeffcoat-Sacco
General Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

Re: CPV Ashley Renewable Energy Company, LLC, Ashley Wind Power - Power Project -
McIntosh County - Siting Application - Case No. PU-09-370
OAH Case No. 20100212

Dear Ms. Jeffcoat-Sacco:

Enclosed is late-filed exhibit 14, along with a cover letter and affidavit, that has been filed with me as the hearing officer in the above matter. Late-filed exhibit 14 is admitted for the record in this matter. To be included as part of late-filed exhibit 14 are the scheduled filings of comments in regard to it, to be filed by the Applicant and Commission Staff. Please file the exhibit, cover letter, and affidavit with the record in this matter. And, please file the scheduled comments as part of late-filed exhibit 14, which will be filed directly with the Commission.

Sincerely,

Allen C. Hoberg
Administrative Law Judge

ACH/lmw

Enc.

Cc: Lawrence Bender and Mollie M. Smith, co-counsel for Ashley Wind Power
Mitchell D. Armstrong, Special Assistant Attorney General



122 E. Broadway Avenue
Bismarck, ND 58501

August 24, 2010

P.O. Box 460
Bismarck, ND 58502-0460
Phone (701) 258-0630
Fax (701) 258-6498

Mr. Allen Hoberg
Office of Administrative Hearings
1707 North 9th Street
Bismarck, ND 58501

In re: CPV Ashley Renewable Energy Company, LLC, Ashley Wind Power –
Power Project – McIntosh County, Siting Application
Case No.: PU-09-370

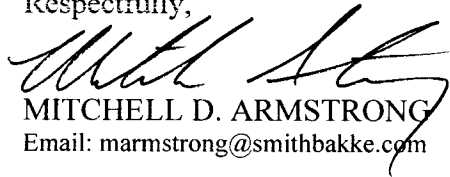
Dear Mr. Hoberg:

Enclosed for filing in the above-referenced matter, please find Exhibit 14 and
Affidavit of Service by Mail.

Thank you for your assistance in this matter.

Sheldon A. Smith*
Randall J. Bakke***
Scott K. Porsborg***
Suzanne M. Schweigert*
Mitchell D. Armstrong**
Shawn A. Grinolds**
David R. Phillips**
Stacy M. Moldenhauer*
David J. Smith*
Bradley N. Wiederholt**

Respectfully,



MITCHELL D. ARMSTRONG
Email: marmstrong@smithbakke.com

jah
enclosure
cc: Lawrence Bender and Mollie Smith (w/ enc.) (via e-mail & U.S. Mail)

Hoberg.2

RECEIVED

AUG 25 2010

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



AUG 20 2010

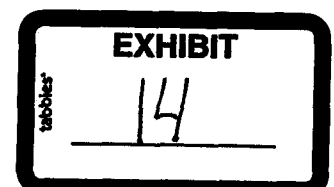
Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505

Dear Commissioners:

The U.S. Fish and Wildlife Service (Service) has reviewed the June 30, 2010, Notice of Filing and Notice of Hearing (Notice) for Case No. PU-09-370, regarding CPV Ashley Renewable Energy Company, LLC's (CPV) application for a site compatibility to authorize construction of its Ashley Wind Energy Project (Project) consisting of 87 wind turbine generators totaling up to approximately 200.1 megawatts (MW) of generating capacity and associated facilities in McIntosh County, 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), and Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.).

The Service's North Dakota Field Office is currently providing technical assistance on the subject project to the applicant (CPV) and the Tennessee Valley Authority (TVA), the Federal action agency. The Fish and Wildlife Service supports the responsible development and transmission of renewable, sustainable energy sources, including wind energy. However, wind energy developments and the transmission facilities constructed to transmit the electricity generated may present threats to wildlife and their habitats. In general, the wildlife resources and issues that warrant consideration during project planning include: bald and golden eagles, migratory birds and bats (e.g., potential for habitat fragmentation, collisions and electrocutions); Federal land interests; native wetland, prairie, and woodland habitats; threatened and endangered species; and monitoring, research, and assessment. The Fish and Wildlife Service encourages all energy facility developers to plan, design, construct, and operate their projects in such a manner that fish and wildlife resource conservation is given equal consideration with other features of project development. Some of the issues that are currently being discussed with our office and will need to be resolved prior to project construction include:

- Potential project effects to the federally threatened piping plover and endangered whooping crane and what measures the applicant will take to avoid, minimize, and, as needed, off-set those effects.
- Potential adverse impacts to bald and golden eagles, migratory birds and bats and their habitats, and agreement on an acceptable project specific Avian and Bat Protection Plan.




- Adequate wildlife survey, monitoring, and reporting procedures.

The Service in consultation with the Federal Action Agency (TVA) and the applicant continue to work to resolve the above issues which may require modification of the project as currently proposed. Providing testimony at the Public Hearing prior to completion of the Federal review process may put the applicant at risk of presenting incomplete project information to the Commission. The Service suggests that the Commission urge project proponents to confirm their compliance with all Federal environmental laws and regulations before they present their project to the Commission.

Thank you for the opportunity to comment on the proposed Project. 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,


for Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

cc: Special Agent, Bismarck
Tennessee Valley Authority, Knoxville, TN
(Attn: P. Shute)