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JUN 23 2010

PUBLIC SERVICE COMMISSION

FAX TRANSMISSION

U.S. FISH AND WILDLIFE SERVICE
3425 Miriam Avenue
Bismarck, North Dakota 58501-7926
701-250-4481
Fax: 701-355-8513

To:	Public Service Commission	Date:	6-23-10
Fax No.	701-328-2410	Pages:	12 Pages, including this cover sheet.
From:	Terry Ellsworth		
Subject:	PU-09-724 NextEra Energy Resources		

Original letter to follow by regular mail.

PLEASE CALL TO CONFIRM RECEIPT.





United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



JUN 23 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 May 12, 2010, Notice of Filing and Notice of Hearing (Notice) for Case No. PU-09-724, regarding NextEra Energy Resources, LLC's (NextEra) application for a waiver of procedures and time schedules, a corridor certificate, and a route permit to authorize construction of 11 miles of 230kV electric transmission line and associated facilities in Oliver and Morton Counties, North Dakota. On May 12, 2010, NextEra requested to transfer this case to its subsidiary, Oliver Wind III, LLC. 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 has not had an opportunity to review and provide comments on the currently proposed Oliver Wind III, LLC 11-mile long 230kV transmission line project as presented in the Notice. Our office provided a technical assistance letter (enclosed) on October 20, 2009, to Tetra Tech EC, Inc., the project consultant for NextEra, in response to Tetra Tech's September 11, 2009, request for environmental information on a proposed six mile long transmission line project in Morton and Oliver Counties. In our October 20, 2009, letter, we made numerous recommendations that the project proponent coordinate their project development efforts with our office to ensure that the proposed project can be constructed and operated in compliance with the environmental laws and regulations we administer. To date, our office has received no response to our October 20, 2009, letter and no additional information has been submitted regarding modifications to the previously proposed transmission line project.

The U.S. 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 U.S. 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 outstanding issues that need to be addressed prior to project construction include:

- Potential project effects to federally listed threatened and endangered species and measures 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.

Until the above issues have been satisfactorily addressed, the proposed project is not considered to be in compliance with the environmental laws and regulations we administer. This is not to say that the U.S. Fish and Wildlife Service does not believe the subject project cannot be built in compliance with Federal wildlife laws, but only that Oliver Wind III, LLC has not yet responded to our response to their inquiry.

The proposed location for the subject Oliver Wind III, LLC transmission line is in the center of the whooping crane migration corridor and in close proximity to existing Oliver County wind energy infrastructure. The cumulative impact of the existing wind developments with their associated infrastructure and other stressors in the project area to migrating whooping cranes is currently unknown. The construction of one wind facility may have no apparent negative influence. However, the construction of numerous wind facilities and their associated infrastructure in the same area may result in an unacceptable level of effect. We ask the Public Service Commission to consider the cumulative effects to fish and wildlife resources that could result from siting the subject Oliver Wind III, LLC transmission line in the same area as the existing wind facilities.

Thank you for the opportunity to comment on the proposed Oliver Wind III, LLC, 230kV transmission line 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,



 Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosure

cc: Special Agent, FWS, Bismarck

File: Energy Wind Power
NextEra Energy Oliver Co

logged

OCT 20 2009

Ms. Anne-Marie Griger
Tetra Tech, EC Inc.
7800 Shoal Creek Boulevard, Suite 253 East
Austin, Texas 7 8757

TSE
10-20-09

Dear Ms. Griger:

This is in response to your September 11, 2009, request for environmental information relating to a proposed north-south six mile electric transmission line by NextEra Energy in connection with wind energy development in Morton and Oliver Counties, North Dakota. The northern terminus of the proposed transmission line is approximately 5 miles southeast of Center, North Dakota. The proposed transmission line corridor includes portions of:

T. 140 N., R. 83 W., Sections 4-6

T. 141 N., R. 83 W., Sections 3, 4, 9, 10, 15, 16, 21, 22, 27, 28, 33, and 34

T. 142 N., R. 83 W., Sections 33 and 34

We offer the following comments under the authority of and in accordance with the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250), Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), and the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57).

The information provided in your letter (Appendix 1: Summary of Surveys Conducted to Date) indicates that the proposed project would be constructed to serve the planned Oliver Expansion Project (Oliver Wind Energy Center Phases III, IV, and V) which could include up to 400, 1.5 Megawatt (MW) wind turbines and 261, 2.5 MW wind turbines located in a 167-square mile area of Morton and Oliver Counties. No additional information is provided regarding the construction and operation of the Oliver County Expansion Project. Although the project proponents may consider the transmission line and the wind farm expansion as separate, these projects would each appear to be dependent on the other. The potential impacts of these efforts should be assessed together. The U.S. Fish and Wildlife Service (Service) recommends that the project proponent contact the North Dakota Field Office to discuss the details of the Oliver County Expansion Project at their earliest opportunity.

The 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 Refuge system. One goal of Service policy is that conservation of fish and wildlife resources receive equal consideration with other features of resource development, and that conservation actions are coordinated with those other forms of development. Another goal is to conserve, protect, and enhance fish and wildlife and their habitats, and to facilitate the balanced development of the Nation's natural resources. 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

The Service has coordinated with the Avian Power Line Interaction Committee (APLIC) to develop guidelines to assist companies in formulating Avian Protection Plans (APP). These plans are utility-specific and designed to provide a structured way for a company to reduce avian mortality resulting from interactions with electric utility facilities (e.g. collisions and electrocutions). The APP can be tailored to each utility's industry-specific and site specific wildlife needs, while in the process furthering avian conservation and improved reliability and customer service. A utility that implements the principles contained in these APP guidelines will greatly reduce avian risk as well its own risk of enforcement under the Migratory Bird Treaty Act (MBTA). The guidelines can be accessed from the Service's website at <http://www.fws.gov/migratorybirds/>. We strongly encourage the project developer of the proposed wind energy facility to investigate the formulation of an APP or if bats may also be affected by the project, an Avian and Bat Protection Plan (ABPP). An example of a completed ABPP can be found at Iberdrola Renewables' website at http://www.iberdrolarenewables.us/pdf/Signed_ABPP_10-28-08.pdf.

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 "[2006 Suggested Practices for Avian Protection on Power Lines](#)". To increase power line visibility and reduce bird fatalities resulting from collisions with power lines, the Service recommends all 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. Marking of overhead lines can also reduce the hazard of line strikes to whooping cranes (see below).

The Migratory Bird Treaty Act (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 allowing unintentional take, the Service realizes that some birds may be killed by power lines even if all reasonable measures to protect them are used. The Service's 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 recommending prosecution of persons that take migratory birds without regard for their actions or without following recommendations such as this to avoid take. The Service cooperates with developers to minimize impacts to migratory birds and to bald and golden eagles. Parties who wish to demonstrate they have taken all reasonable steps to protect migratory birds and bald and golden eagles are advised to incorporate the Service's recommendations into their project plans, sharing those plans with this office, and making any necessary modifications.

To avoid impacts to migratory birds or other wildlife during the breeding season (February 1 to July 15), schedule construction for late summer or fall/early winter. 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 until such time as construction on the proposed project has been completed.

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). This list fulfills requirements of the Fish and Wildlife Service under the Endangered Species Act.

Section 10(a)(1)(B) of the ESA allows non-Federal parties planning activities that have no Federal nexus, but which are likely to result in the incidental taking of listed animals, to apply for an incidental take permit. 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 stopover habitat in the vicinity of this proposed transmission line project. The proposed project area is located within that portion of the whooping crane migration corridor that includes 75 % of all confirmed whooping crane sightings in North Dakota (enclosure 2). The presence of suitable roosting and feeding habitat for whooping cranes, and location within the whooping crane migration corridor, document the potential for whooping crane presence in the proposed project area. 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.

Due to the proposed transmission line route within the whooping crane migration corridor, the Service recommends that conservation measures be included in the project and that the project description include those measures. 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 transmission lines cannot be buried, mark all new overhead transmission lines and an equal length of existing transmission/distribution lines within the 75% migration corridor with visual marking devices such as aviation marker balls, swinging plates, spiral vibration dampeners, or swan flight diverters and maintain the marking devices to reduce the potential for whooping crane collision. If the recommendations above are implemented for the proposed transmission line project, the Service believes that the potential for adverse effects to the endangered whooping crane would not be likely. However, as stated above, we encourage the project proponent to discuss with the Service coordinating the review and assessment of the proposed transmission line project together with the proposed Oliver Wind Energy Center Expansion Project.

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 indicates no Service property interests are located in the planning area.

High Value Habitat Avoidance

Our review of NWI maps indicates that wetland areas are located within the project area. NWI data can be accessed directly by visiting their website at (wetlands.fws.gov). The Service recommends that impacts to wetlands in the project area be avoided to the extent practicable and that all unavoidable loss of wetland habitat be replaced through restoration or creation of functionally equivalent wetland habitat. Section 404 of the Clean Water Act regulates placement of fill materials in certain wetlands. A Corps of Engineers' (Corps) 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.

The proposed project area is located in the Missouri Slope Upland region of North Dakota and includes areas of native mixed-grass prairie. Since the 1800s, North Dakota has lost approximately 75 percent of its native grasslands, primarily due to crop production. Other high value wildlife habitat types in North Dakota include wooded draws and riparian forests. We recommend that you avoid construction of transmission lines and appurtenant facilities 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. To help avoid impacts, we recommend that you:

- 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 appurtenant facilities 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.

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 time line. Please inform our office in writing of how project impacts to Service trust resources will be avoided, minimized, or mitigated. 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

Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosures (2)

cc: 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 THREATENED AND ENDANGERED SPECIES
AND DESIGNATED CRITICAL HABITAT FOUND IN
MORTON COUNTY, NORTH DAKOTA
October 2009

ENDANGERED SPECIES

Birds

Interior least tern (*Sterna antillarum*): Nests along midstream sandbars of the Missouri and Yellowstone Rivers.

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.

Fish

Pallid sturgeon (*Scaphirhynchus albus*): Known only from the Missouri and Yellowstone Rivers. No reproduction has been documented in 15 years.

Mammals

Black-footed ferret (*Mustela nigripes*): Exclusively associated with prairie dog towns. No records of occurrence in recent years, although there is potential for reintroduction in the future.

Gray wolf (*Canis lupus*): Occasional visitor in North Dakota. Most frequently observed in the Turtle Mountains area.

THREATENED SPECIES

Birds

Piping plover (*Charadrius melodus*): Nests on midstream sandbars of the Missouri and Yellowstone Rivers and along shorelines of saline wetlands. More nest in North Dakota than any other state.

DESIGNATED CRITICAL HABITAT

Birds

Piping Plover - Lake Oahe - Critical habitat includes sparsely vegetated shoreline beaches, peninsulas, islands composed of sand, gravel, or shale, and their interface with the water bodies.

FEDERAL THREATENED, ENDANGERED, AND CANDIDATE SPECIES
AND DESIGNATED CRITICAL HABITAT FOUND IN
OLIVER COUNTY, NORTH DAKOTA
October 2009

ENDANGERED SPECIES

Birds

Interior least tern (*Sterna antillarum*): Nests along midstream sandbars of the Missouri and Yellowstone Rivers.

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.

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THREATENED SPECIES

Birds

Piping plover (*Charadrius melodus*): Nests on midstream sandbars of the Missouri and Yellowstone Rivers and along shorelines of saline wetlands. More nest in North Dakota than any other state.

CANDIDATE SPECIES

Invertebrates

Dakota skipper (Hesperia dacotae): Found in native prairie containing a high diversity of wildflowers and grasses. Habitat includes two prairie types: 1) low (wet) prairie dominated by bluestem grasses, wood lily, harebell, and smooth camas; 2) upland (dry) prairie on ridges and hillsides dominated by bluestem grasses, needlegrass, pale purple and upright coneflowers and blanketflower.

DESIGNATED CRITICAL HABITAT

Birds

Piping Plover - Missouri River - Critical habitat includes sparsely vegetated channel sandbars, sand and gravel beaches on islands, temporary pools on sandbars and islands, and the interface with the river.