



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501



DEC 22 2011

**RECEIVED**

DEC 27 2011

Mr. Dan Albano  
Global Winds Harvest  
197 North Street Road  
Argyle, New York 12809

### **PUBLIC SERVICE COMMISSION**

Re: Proposed Thunder Spirit Wind Project  
in Adams County, North Dakota

Dear Mr. Albano:

This is in regard to Global Winds Harvest's (Global Winds) proposed Thunder Spirit Wind Energy Project in Adams County, North Dakota. According to your November 1, 2011, email the project is currently planned to include 75-78 wind turbines, underground electrical collection system, and approximately 1 mile of overhead transmission line to interconnect to an existing substation northeast of Hettinger, 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.) (MBTA), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250) (BGEPA), and the Endangered Species Act (16 U.S.C. 1531 et seq.) (ESA). Our comments address Global Winds Harvest's need to be in compliance with all relevant Federal wildlife laws.

The U.S. Fish and Wildlife Service (Service), North Dakota Ecological Services Office, first became aware of the subject project from a Wind Works Power Corporation (Wind Works) press release dated April 12, 2011, which indicated that construction of the proposed Thunder Spirit Wind Power Project was planned for 2012. By letter dated June 2, 2011, I strongly encouraged Dr. Ingo Stuckman, President and CEO of Wind Works, to contact this office as early as possible to discuss Wind Works' plans for the proposed project. I also informed Dr. Stuckman that Wind Works and/or any subsequent project owner would be liable for any unauthorized take that were to occur from the construction and operation of the subject project pursuant to the ESA and BGEPA, and subject to the potential for prosecution pursuant to the MBTA, depending on the companies' efforts to avoid and minimize take of migratory birds, in coordination with the Service. Enclosed with that June 2, 2011, letter was a list of threatened and endangered species, the Service's 2003 Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines, and the August 3, 2010, Service Whitepaper Providing Guidance for the Development of Project Specific Avian and Bat Protection Plans for Renewable Energy Facilities. No response to my letter has been received to date.

In an October 13, 2011, email, Irina Gumennik, Tetra Tech EC, requested wetland easement data from the Service's HAPET office for a wind project in Adams County that appears to be the

Thunder Spirit project according to the GIS shapefile that was attached to the email. The HAPET office informed our office of the request for easement information related to a wind power project in Adams County. No contact was made with the North Dakota Field Office by Tetra Tech EC or the project developer.

In a September 13, 2011, press release in Marketwire.com, Wind Works announced they were entering the North Dakota Public Service Commission permitting process for a 150 MW Project in North Dakota and again indicated that they expected to start construction in 2012. Soon after the press release was issued, I telephoned Mr. Greg Wilson, identified in the press release as the Wind Works point of contact, and left a message requesting that Mr. Wilson contact me at his earliest convenience to discuss Wind Works' plans for the project. To date, neither Mr. Wilson nor anyone else from Wind Works has returned my call.

In a September 16, 2011, email, Mr. Clayton Derby, WEST Inc. (WEST) requested data for any known eagle nests located within 10 miles of the proposed project area. Our review of the eagle nest data indicated that one documented golden eagle nest, confirmed to be active in 2004 and 2006, is located within the 10 mile buffer. On September 21, 2011, Mr. Terry Ellsworth of my staff emailed the requested data to Mr. Derby and with a copy furnished to you. That September 21, 2011, email also included information regarding the Service's January 2011, Draft *Eagle Conservation Plan Guidance* for proposed wind energy projects as well as information related to compliance with the BGEPA.

In your November 1, 2011, email to Terry Ellsworth you provided our office with the first substantial information related to the proposed wind development project we have received. In your email you provided information on the number and location of turbines, and an overview of the environmental work done so far at the project area. The information provided indicates that WEST began field work for the project in 2007 with avian point counts and bat acoustic surveys. In 2011, WEST began additional survey work for the project that includes avian point count surveys, sharp-tailed grouse lek surveys, raptor/eagle nest surveys, desktop vegetation community mapping, and bat acoustic surveys. These surveys were conducted without coordination or input from the Service on the appropriateness or intended use of those surveys.

On November 3, 2011, Terry Ellsworth of my staff met with you and Mr. Derby to discuss the subject project. During that meeting you indicated that Global Winds does not intend to seek permit coverage under the BGEPA because Global Winds believes that the project area has low eagle use. You also indicated that Global Winds does not intend to do post-construction monitoring because Global Winds develops and constructs wind projects and turns the projects over to other companies for operation.

As stated in our letter of June 2, 2011, the Service recommends that all wind project developers follow the Service Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines (interim voluntary guidelines). The interim voluntary guidelines recommend evaluating potential development sites within wind resource areas (WRA), and identifying a reference site with a maximum negative impact on wildlife within a WRA, in order to put risks of developing specific sites within WRAs into perspective. To our knowledge, neither this approach nor any

other approach for comparing impacts at several sites was followed in selecting the site for the Thunder Spirit Wind Project.

In addition, we advised of the requirement to avoid the unauthorized take of federally-listed threatened and endangered species, bald and golden eagles, and migratory birds, and of the process available to obtain authorization for take of listed species and/or eagles, if take is likely to occur, and to minimize the take of migratory birds and their active nests, and of bats. There is no permit available authorizing unintentional take of migratory birds; unauthorized take is addressed through recommendations for prosecution on a discretionary basis. A decision as to whether to recommend prosecution is determined by the party's history of working with the Service to avoid and minimize take of migratory birds. Unauthorized take of listed species, bald and golden eagles, and all migratory birds is subject to substantial penalties under the above Acts.

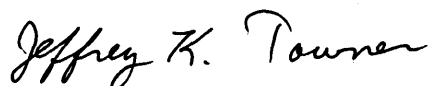
Global Winds has chosen the proposed Thunder Spirit project site without using the recommended approach contained in the interim voluntary guidelines, and without prior coordination with the Service. Global Winds also chose to have consultants conduct wildlife surveys in 2007 and 2011, without coordination or input from the Service.

Based on the lack of coordination with our office, in the Service's opinion, Global Winds cannot demonstrate that the Thunder Spirit Wind Project meets two of the criteria required by the PSC, i.e.; "Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?", and "Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?"

This office has an ever-increasing workload and many competing priorities. Since Global Winds, WEST, and Tetra Tech have chosen not to coordinate your plans with the Service in a way that takes full account of impacts to wildlife, this office will not invest additional staff time and effort in advising you on the Thunder Spirit Wind Project. Be advised that any unauthorized take pursuant to the wildlife laws we implement is subject to civil and/or criminal penalties. Global Winds is advised that the Service will consider any taking of a protected migratory bird, bald eagle, golden eagle, or federally-listed threatened or endangered species caused by construction and/or operation of the proposed Thunder Spirit Wind Project to be a potential criminal violation of the MBTA, BGEPA, and/or the ESA.

You may contact me or Terry Ellsworth of my staff with any questions you have about this letter at telephone (701) 250-4402, or at the letterhead address.

Sincerely,



Jeffrey K. Towner  
Field Supervisor  
North Dakota Field Office

cc: Special Agent, Office of Law Enforcement, Bismarck  
North Dakota Public Service Commission, Bismarck  
Director, North Dakota Game and Fish Department, Bismarck  
(Attn: G. Link)