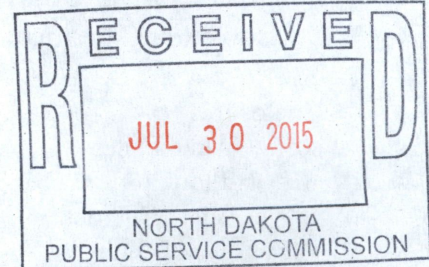


2302 Great N. Drive  
Fargo, North Dakota 58102  
(701) 241-8632  
dave.sederquist@xcelenergy.com

July 30, 2015

— Via Email and Federal Express —

Mr. Darrell Nitschke, Executive Secretary  
North Dakota Public Service Commission  
State Capitol Building – 12<sup>th</sup> Floor  
Bismarck, North Dakota 58505



Re: APPLICANT'S PROPOSED ORDER AND LATE FILED EXHIBITS  
REQUEST TO TRANSFER OF SITE CERTIFICATE SITING APPLICATION  
(CASE NO. PU-15-174)

APPLICATION FOR 200 MW COURTENAY WIND FARM PUBLIC  
CONVENIENCE AND NECESSITY (CASE NO. PU-15-175)

APPLICATION FOR ADVANCE DETERMINATION OF PRUDENCE – 200 MW  
COURTENAY WIND FARM (CASE NO. PU-15-181)

REQUEST TO DISCONTINUE PRUDENCE – COURTENAY WIND FARM PPA  
APPLICATION (CASE NO. PU-15-183)

Dear Mr. Nitschke:

Northern States Power Company, doing business as Xcel Energy, submits to the North Dakota Public Service Commission in the above-referenced matters, the Company's Proposed Order and the following late filed exhibits:

*NSP-LF1 – Transmission Service Summary*

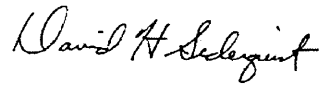
*NSP-LF2 – Conservation Plan Summary*

An original and four (4) copies of the Proposed Order and late filed exhibits are being provided via Federal Express. Please contact me if you have any questions regarding this filing.

21	PU-15-183	Filed 07/30/2015	Pages: 7
	Late-filed Exhibit NSP-2		
28	PU-15-181	Filed 07/30/2015	Pages: 7
	Late-filed Exhibit NSP-2		
29	PU-15-175	Filed 07/30/2015	Pages: 7
	Late-filed Exhibit NSP-2		
22	PU-15-174	Filed 07/30/2015	Pages: 7
	Late-filed Exhibit NSP-2		
	Northern States Power Company		

Darrell Nitschke  
July 30, 2015  
Page 2 of 2

Sincerely,

A handwritten signature in cursive script that reads "David H. Sederquist".

DAVID H. SEDERQUIST  
Sr. Consultant, Regulation & Finance

Enclosures

cc: Mike Diller  
Illona Jeffcoat-Sacco  
Victor Schock  
Jack Schuh  
Jerry Lein

## The Great Plains Wind Energy Habitat Conservation Plan

The Great Plains Wind Energy (Great Plains) Habitat Conservation Plan (HCP) is under development by a group of fifteen wind energy companies in cooperation with the United States Fish and Wildlife Service (Service).<sup>1</sup> The development of the Great Plains HCP was initiated in 2008 and will cover an area approximately 200 miles in width and 1,500 miles in length over the states of North Dakota, South Dakota, Montana, Colorado, Nebraska, Kansas, New Mexico, Oklahoma, and Texas.<sup>2</sup> The development process for the Great Plains HCP has been closed to new participants for a number of years and not much information on the status of the plan is publicly available. As recently as December 2014, the details of the Great Plains HCP were still unknown and neither a draft HCP nor a draft Environmental Impact Statement had been released for public comment.<sup>3</sup> Participation in the Great Plains HCP is not available to the Courtenay Wind Farm and would also not likely be timely for the construction and operation of the project.

## Habitat Conservation Plans and Incidental Take Permits

A HCP is required by the Service when a non-federal entity voluntarily seeks an incidental take permit under Section 10(a)(1)(B) of the Endangered Species Act.<sup>4</sup> To evaluate whether a voluntary incidental take permit should be applied for and a HCP should be prepared for a project, studies are performed to evaluate the potential for otherwise lawful activities to result in a take of a federally-listed species, and consultation with the Service is undertaken by the project-proposer.<sup>5</sup>

Geronimo, the original developer of the Courtenay Wind Farm, initiated, and Xcel Energy has continued, consultation with the Service regarding the potential impacts to species listed under the Endangered Species Act. Multiple surveys for various avian species in the area around the Courtenay Wind Farm site were also conducted. The primary concern identified by the Service was the potential to adversely impact whooping cranes. The Courtenay Wind Farm is located outside the historic whooping crane siting area and, to date, no sightings have occurred within the boundaries of the Courtenay Wind Farm site. In fact, modeling to gauge the

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<sup>1</sup> Great Plains HCP (<http://www.greatplainswindhcp.org/index-2.html>).

<sup>2</sup> *Id.*

<sup>3</sup> Department of Energy, Western Area Power Administration Final Environmental Impact Statement for the Interconnection of the Grande Prairie Wind Farm, Holt County Nebraska, December 2014 (<http://energy.gov/sites/prod/files/2015/01/f19/EIS-0485-FEIS-2014.pdf>).

<sup>4</sup> United States Fish and Wildlife Service, HCPs (<http://www.fws.gov/endangered/what-we-do/hcp-overview.html>). An incidental take permit is different than an eagle take permit, which is discussed in additional detail below.

<sup>5</sup> United States Fish and Wildlife Service, HCP Fact Sheet (<http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf>).

likelihood of adverse impact to whooping cranes resulted in a score of 1.47, well below the “low likelihood” threshold of 4. The Service, after reviewing this information, indicated that whooping cranes were likely to avoid wind turbines but there remained some concern about the potential for collision with the associated transmission lines. Given this concern, all 17 miles of transmission lines to be constructed as part of the Courtenay Wind Farm project will have bird flight diverters installed on the shield wire at intervals agreed upon between Xcel Energy and the Service.

After completing these surveys, and in consultation with the Service, Geronimo concluded, and Xcel Energy agrees, that an incidental take permit and an HCP were not necessary for the Courtenay Wind Farm at this time. The NDPSC’s findings of fact for the Courtenay Wind Farm provide that, as a result of the completed surveys, “[n]o adverse impacts to federally-listed threatened or endangered species are anticipated” as a result of the construction or operation of the wind farm.<sup>6</sup>

#### Eagle Conservation Plans and Eagle Take Permits

Although the surveys performed for the Courtenay Wind Farm did not identify a need for an incidental take permit or an HCP, the results indicated a low, but under Service guidance, not discountable, likelihood of a non-purposeful incidental bald eagle take when the wind farm is operational.

The NDPSC’s findings of fact acknowledge this by stating that consultation with the Service would occur to determine the appropriate next steps given the presence of an eagle nest in the area.<sup>7</sup> To address the potential risk of eagle take, Xcel Energy is pursuing obtaining a voluntary programmatic eagle take permit (ETP) from the Service for the Courtenay Wind Farm. Obtaining an ETP protects the permit holder from Service enforcement action under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act so long as the permit holder complies with all conditions of the ETP.<sup>8</sup> We note for clarification that an ETP is different than an incidental take permit, discussed above, under Section 10(a)(1)(B) of the Endangered Species Act.<sup>9</sup>

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<sup>6</sup> Case No. PU-13-064 (Nov. 13, 2013 Findings of Fact, Conclusions of Law and Order at Finding 32).

<sup>7</sup> Case No. PU-13-064 (Nov. 13, 2013 Findings of Fact, Conclusions of Law and Order at Finding 32).

<sup>8</sup> 74 Fed. Reg. 46,836 at 46,841.

<sup>9</sup> A voluntary incidental take permit is available for federally-listed species under the Endangered Species Act while a voluntary programmatic ETP is available only for bald and golden eagles under the Bald and Golden Eagle Protection Act.

To obtain an ETP, Xcel Energy must develop conservation measures and has elected to do so through the development of an Eagle Conservation Plan (ECP).<sup>10</sup> The development of an ECP involves continued consultation with the Service and other state and federal wildlife management agencies to ensure that appropriate mitigation measures and best management practices are implemented to minimize the potential impact on eagles by the operation of the wind farm to reduce take to a level where any remaining take is essentially unavoidable.<sup>11</sup>

Additionally, obtaining an ETP will require the Service to complete a National Environmental Policy Act review of its action of issuing the permit. As part of this review, the Service will also likely consider potential impacts to federally-listed species under Section 7 of the Endangered Species Act.<sup>12</sup> If, as part of that consideration, the Service identifies that its issuing of the ETP would likely have an adverse effect on federally-listed species, the Service would develop an incidental take statement, which would have to be complied with by Xcel Energy.<sup>13</sup> Therefore, even though the initial surveys resulted in the conclusion that the Courtenay Wind Farm is not anticipated to have adverse impacts on federally-listed species, that evaluation will likely be reevaluated as part of the Service's review of the ETP application for the project. Should the Service conclude that potential to adversely impact these species exists, Xcel Energy will work with the Service to address its concerns.

### Bird and Bat Conservation Strategy

In concert with the ETP and ECP, Geronimo initiated, and Xcel Energy has continued, the development of a Bird and Bat Conservation Strategy (BBCS) for the Courtenay Wind Farm. The development of a BBCS was included in the NDPSC's findings of fact for the Courtenay Wind Farm.<sup>14</sup> The BBCS has also been developed in cooperation with the Service and to comply with the Service's Wind Energy Siting Guidelines. The BBCS includes an adaptive management approach so that, should changes occur, new surveys or management practices would be initiated and the BBCS would be revised to address those changes.

All of these conservation measures fit into Xcel Energy's larger conservation strategy that includes an existing Avian Protection Plan and Memorandum of Understanding

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<sup>10</sup> United Fish and Wildlife Service, Form 3-200-71 (<http://www.fws.gov/forms/3-200-71.pdf>).

<sup>11</sup> *Id.*

<sup>12</sup> 50 C.F.R. §22.28.

<sup>13</sup> 50 C.F.R. §22.28(c).

<sup>14</sup> Case No. PU-13-064 (Nov. 13, 2013 Findings of Fact, Conclusions of Law and Order at Finding 32).

with the Service.<sup>15</sup> These existing documents address the discovery, reporting, and mitigation measures related to potential adverse impacts to avian species by projects operated by Xcel Energy. The Company has taken proactive steps to develop the existing Avian Protection Plan and Memorandum of Understanding to memorialize appropriate preventive measures to minimize adverse impacts on avian species by Company operations and, when a new concern is discovered or identified, the process provides for prompt response<sup>16</sup>.

### Timing of Courtenay Operation and Development of Conservation Plans

The development of an ECP and processing of an application for a programmatic ETP take time.<sup>17</sup> Currently, the Service estimates that it will take approximately a year to develop the ECP and obtain an ETP for the Courtenay Wind Farm. At this time, the Service's regional office in Denver has completed its review of the draft ECP and forwarded its comments to the Bismarck office.

It is possible that the Courtenay Wind Farm will be constructed and ready for operation prior to Xcel Energy obtaining an ETP. Should that occur, Xcel Energy has already committed, through the BBCS, to certain measures to minimize the likelihood of eagle take, which may include implementing measures such as intensive monitoring or selective turbine curtailment when eagles are identified in the area of the project wind turbines. We believe we are undertaking all necessary and prudent actions to address the requirements of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, consistent with the Commission's Certificate of Site Compatibility. In the unlikely event that an eagle take occurs prior to our receipt of the ETP, we will inform the Commission and work with our stakeholders to appropriately address it.

### Conclusion

The project developer, Geronimo and now Xcel Energy, has worked closely with the Service to identify appropriate conservation measures to mitigate adverse impacts to

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<sup>15</sup> Xcel Energy, Avian Protection Plans

(<https://www.xcelenergy.com/staticfiles/xcel/Corporate/CRR2014/environment/biodiversity.html>)

<sup>16</sup> Xcel Energy developed, in conjunction with Service, and implemented the Avian Protection Plan in 2002 with the express purpose of minimizing the impacts of Xcel Energy's operations on migratory birds. Even though originally developed to address avian powerline interactions, Xcel Energy applies the Avian Protection Plan to all of our operations, including power generation. The Avian Protection Plan describes how the Company assesses and implements appropriate avian protection measures in areas of possible or known impacts and how Xcel Energy reports migratory bird impacts to the Service in a timely manner.

<sup>17</sup> United Fish and Wildlife Service, Form 3-200-71 (<http://www.fws.gov/forms/3-200-71.pdf>).

federally-listed species and non-listed avian species. This includes existing measures through the Xcel Energy Avian Protection Plan and Memorandum of Understanding with the Service and project-specific measures through surveys, development of an ECP and BBCS, and obtaining a programmatic ETP. This is consistent with the direction of the findings of fact supporting the NDPSC's issuance of the Certificate of Site Compatibility.

Although the project developer has changed, the commitments made during the processing of the Certificate of Site Compatibility regarding mitigation measures to minimize or avoid adverse impacts to eagles and federally-listed species have not changed. Xcel Energy has committed to continued cooperation and consultation with the Service to ensure that appropriate best management practices and mitigation measures are implemented for the construction and operation of the Courtenay Wind Farm.