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February 6, 2017

Via Electronic Filing

Ms. Barcy McNeal
Public Utilities Commission of Ohio
Administration/Docketing
180 East Broad Street, 11th Floor
Columbus, OH 43215-3793

**Re: Hog Creek Wind Farm LLC,
Case Nos. 16-1422-EL-BGA and 16-1423-EL-BGA**

Dear Ms. McNeal:

On November 29, 2016, the Ohio Power Siting Board ("OPSB") issued an Order on Certificate approving Hog Creek's applications to amend its Hog Creek I Certificate (Case No. 09-277-EL-BGN) and Hog Creek II Certificate (Case No. 10-654-EL-BGN) subject to the conditions set forth in the Stipulation and the conditions set forth in the certificate orders as later amended (Order on Certificate at 9).

Within these sets of conditions, **Stipulation Condition No. 5** requires that:

At the time the first turbine is mechanically completed, the Applicant shall obtain and provide to Staff a technical assistance letter from the U.S. Fish and Wildlife Service (USFWS) or obtain an Incidental Take Permit under Section 10 of the Endangered Species Act.

Attached is a copy of the U.S. Fish and Wildlife Service Technical Assistance Letter dated February 2, 2017. Thus Hog Creek is in compliance with Stipulation Condition No. 5.

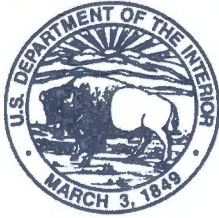
If you have any questions please call at the number listed above.

Sincerely,

Sally W. Bloomfield

Attachment

cc: Andrew Conway (w/Attachment)
Jonathan Pawley (w/Attachment)



UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. Fish and Wildlife Service
Ecological Services Office
4625 Morse Road, Suite 104
Columbus, Ohio 43230
(614) 416-8993 / Fax (614) 416-8994



February 2, 2017

Mr. Sean Flannery
RES
330 2nd Avenue South, Suite 820
Minneapolis, MN, 55401

TAILS : 03E15000-2017-TA-0672

Re: Hog Creek Wind Project, LLC – Technical Assistance Letter

Dear Mr. Flannery:

The purpose of this letter is to acknowledge and respond to RES's request for technical assistance concerning the effects of the above-referenced project on Endangered Species Act (ESA)-listed species under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS).

Section 9(a)(1)(B) of the ESA, 16 U.S.C. § 1538 (a)(1)(B), makes it unlawful for any person to "take" an endangered species. Take of threatened species is prohibited pursuant to 50 C.F.R. § 17.31, which was issued by the USFWS under the authority of Sections 4(d) and 9(a)(1)(G) of the ESA, 16 U.S.C. §§ 1533(d) and 1538(a)(1)(G), respectively. "Take" is defined by the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct" 16 U.S.C. § 1532(19).

The Indiana bat (*Myotis sodalis*), a federally-listed endangered species, and the northern long-eared bat (*Myotis septentrionalis*), a federally-listed threatened species are both known to occur near the project area (within Hardin County).

Take of Indiana bats has been documented in both spring and fall, at two wind projects in Ohio, and at other wind projects in Indiana, Pennsylvania, and West Virginia. Mortality of northern long-eared bats has been detected at many wind facilities throughout the range of this species in the United States and Canada. Thus, the USFWS believes that, without implementation of avoidance measures, take of Indiana bats and northern long-eared bats at RES's Hog Creek Wind Farm is likely to occur during both the spring and fall migration periods.

The USFWS has reviewed the information provided in your request, and the measures that will be implemented at Hog Creek Wind Farm to avoid any potential take of such species. This includes fully feathering the wind turbine generators below a wind speed of 6.9 meters per second between one half hour before sunset to one half hour after sunrise during the Indiana bat's spring and fall migratory periods, which encompass the dates of March 15-May 15, and August 1-October 31. Based on USFWS' review of these avoidance measures, no incidental take permit is recommended. The USFWS reached this conclusion through coordination and ongoing

discussions with RES including RES's commitment, in writing to the USFWS, that proven avoidance measures will be implemented throughout the life of the project or until incidental take coverage is obtained. However, if an unexpected take does occur, an incidental take permit may be required in the future.

The USFWS published a 4(d) rule for the northern long-eared bat on January 14, 2016, which exempts incidental take of this species for certain otherwise lawful activities. Under the 4(d) rule, take of northern long-eared bats from operation of the Hog Creek Wind Farm would be exempted from the ESA's take prohibitions. Northern long-eared bats are in the same genus as Indiana bats, and have similar morphological features, habitat needs, and active periods. The USFWS believes that the avoidance measures outlined above for Indiana bats will also result in avoidance of mortality for northern long-eared bats. Thus, should the northern long-eared bat 4(d) rule ever cease to apply, implementation of the avoidance measures as described above should preclude take of northern long-eared bats.

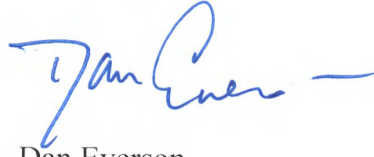
As required by the Ohio Power Siting Board Certificate of Environmental Compatibility and Public Need, post-construction mortality monitoring will be required to document bird and bat mortalities. This monitoring should be consistent with Ohio Department of Natural Resources (ODNR) protocol and be reported annually. ODNR's monitoring protocol is also sufficient to document to the USFWS that the measures above are precluding take of Indiana bats and northern long-eared bats. We request that you provide our office with the monitoring results concurrent with ODNR notification.

This office is not authorized to provide guidance in regards to the USFWS Office of Law Enforcement (OLE) investigative priorities involving federally listed species. However, we understand that OLE carries out its mission to protect ESA-listed species through investigation and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to avoid take of listed species; and by encouraging others to implement measures to avoid take of listed species. It is not possible to absolve individuals or companies from liability for unpermitted take of listed species, even if such take occurs despite the implementation of appropriate take avoidance measures. However, the Office of Law Enforcement focuses its enforcement resources on individuals and companies that take listed species without identifying and implementing all reasonable, prudent and effective measures to avoid such take. As of this date, the USFWS Columbus Field Office concludes that the proposed project is unlikely to result in take of ESA listed species.

We recommend you coordinate this project with the ODNR-DOW, as both the Indiana bat and northern long-eared bat are state-listed species. Please contact Kate Parsons at (614) 265-6329, or Kate.Parsons@dnr.state.oh.us.

We appreciate RES's efforts to coordinate with our office in determining what measures could be implemented to avoid take of any ESA-listed species or their habitat at the project site. Should any new information become available, we request that RES promptly notify the USFWS. If new information becomes available to the USFWS that other measures could be implemented to avoid take that would not require additional commitment by RES, such as wind speeds shown to preclude foraging by Indiana bats, USFWS will notify RES as soon as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Everson", followed by a horizontal line.

Dan Everson
Field Supervisor

cc: Kate Parsons, ODNr, via email

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/6/2017 4:22:20 PM

in

Case No(s). 16-1422-EL-BGA, 16-1423-EL-BGA

Summary: Correspondence of Hog Creek Wind Farm LLC in Compliance with Stipulation Condition No. 5 electronically filed by Teresa Orahod on behalf of Sally W. Bloomfield