

July 21, 2022

Ms. Tanowa Troupe, Secretary
Ohio Power Siting Board
Docketing Division
180 East Broad Street, 11th Floor
Columbus, Ohio 43215-3797

Re: Case No. 20-417-EL-BGN

In the Matter of the Application of Grover Hill Wind, LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Wind-Powered Electric Generation Facility in Paulding County, Ohio.

Sixth Supplement to Application – USFWS Technical Assistance Letter

Dear Ms. Troupe:

On May 3, 2021, as supplemented on June 7 and December 21, 2021, and January 24, May 26, and July 13, 2022, Grover Hill Wind, LLC (“Grover Hill”), filed an application with the Ohio Power Siting Board (“Board”) for a Certificate of Environmental Compatibility and Public Need to Construct a Wind-Powered Electric Generation Facility in Paulding County, Ohio (“Application”).

Attached please find the Technical Assistance Letter from the U.S. Fish and Wildlife Service.

We are available, at your convenience, to answer any questions you may have.

Respectfully submitted,

/s/ Christine M.T. Pirik

Enclosure

CC: Jim O’Dell
Theresa White
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CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below the 21st day of July, 2022.

/s/ Christine M.T. Pirik
Christine M.T. Pirik (0029759)

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4865-4718-7754 v2 [73809-23]

United States Department of the Interior



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July 14, 2022

Mr. Alex Daberko
Grover Hill Wind, LLC
5 Greenwich Office Park, Floor 2
Greenwich, CT 06831

IPAC Project Code : 2022-0061028

Re: Grover Hill Wind Project, Paulding County, Ohio – Technical Assistance Letter, 20-0417-EL-BGN

Dear Mr. Daberko:

This letter is in response to your request for technical assistance regarding the effects of the above-referenced project on listed species pursuant to the Endangered Species Act of 1973, as amended (ESA), under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). The federally endangered Indiana bat (*Myotis sodalis*) and the federally threatened northern long-eared bat (*Myotis septentrionalis*) both occur near the Grover Hill Wind Project area located in Paulding County, Ohio.

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).

Take of Indiana bats has been documented in both spring and fall at two wind facilities in Ohio, and at other wind facilities in Indiana, Illinois, Iowa, Missouri, 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, take of Indiana bats and northern long-eared bats at the Grover Hill Wind Project is likely to occur without implementation of appropriate avoidance measures.

The USFWS has reviewed the information provided in your request, and the measures that will be implemented at the Grover Hill Wind Project to avoid any potential take of listed bat 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 to May 15, and August 1 to October 31. In addition, for the subset of turbines within the homerange of Indiana bat maternity colonies, turbines will also be feathered below 6.9 m/s during the summer (May 16 to July 31) between one-half hour before sunset to one-half hour after sunrise. Turbines will be

operated individually utilizing a 10-minute rolling average wind speed for shutdown and a 20-minute rolling average wind speed for startup. That is, turbines will be feathered below the specified seasonal cut-in speed based on a 10-minute rolling average and will resume operations once the 20-minute rolling average wind speed is above the specified seasonal cut-in speed. 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 Grover Hill including Grover Hill's commitment in writing to the USFWS, that these measures will be implemented throughout the life of the project or until incidental take coverage is obtained. However, if unexpected take of a listed species does occur, we will recommend obtaining an incidental take permit.

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 Grover Hill Wind Project would be exempted from the ESA's take prohibitions. USFWS published a proposed rule to reclassify the northern long-eared bat as endangered on March 23, 2022. The Service must publish a final rule on the northern long-eared bat's status by the end of November 2022 to meet a federal court order. Project proponents may continue to use the current 4(d) rule while the northern long-eared bat remains listed as a threatened species. If the reclassification is finalized, the 4(d) rule will be nullified as the ESA does not allow application of 4(d) rules for species listed as endangered. 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 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 cease to apply, implementation of the avoidance measures as described above should preclude take of northern long-eared bats.

As generally required by the Ohio Power Siting Board Certificate of Environmental Compatibility and Public Need, post-construction mortality monitoring will occur 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. Per your letter, monitoring will be conducted for the first one to two years following ODNR protocol, and potentially for a third year if warranted.

This office is not authorized to provide guidance in regards to the USFWS Office of Law Enforcement investigative priorities involving federally listed species. However, we understand the Office of Law Enforcement 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 Ohio 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-Department of Wildlife, as both the Indiana bat and northern long-eared bat are state-listed species. Please contact Erin Hazelton at (614) 265-6349, or Erin.Hazelton@dnr.state.oh.us.

We appreciate your efforts to coordinate with our office in determining what measures could be implemented to avoid take of any ESA-listed species. We request prompt notification should any new information become available regarding the operations of the Grover Hill Wind Project.

Sincerely,

Patrice Ashfield
Field Supervisor

cc: Erin Hazelton, ODNR, via email

**This foregoing document was electronically filed with the Public Utilities
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7/21/2022 3:06:16 PM

in

Case No(s). 20-0417-EL-BGN

Summary: Application - Sixth Supplement to Application – USFWS Technical Assistance Letter electronically filed by Christine M.T. Pirik on behalf of Grover Hill Wind, LLC