

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

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June 15, 2017

Via Email

Hon. Kathleen H. Burgess, Secretary
New York State Board on Electric Generation Siting and the Environment
Three Empire Plaza
Albany, NY 12223-1350
secretary@dps.ny.gov

Jenny L. Briot
Two Radnor Corp. Center, Suite 200
100 Mastsonford Road
Radnor, PA 19087
DeerRiverWind@avangrid.com

Re: Case 16-F-0267 – Atlantic Wind – Deer River Project
DEC Comments on Preliminary Scoping Statement

Dear Secretary Burgess and Ms. Briot:

On behalf of the New York State Department of Environmental Conservation (DEC), enclosed please find DEC's comments on the Preliminary Scoping Statement (PSS) in the above-reference matter, filed by Atlantic Wind, LLC on May 15, 2017. On May 19, 2017, the Siting Board provided notice of filing of the PSS and established a comment deadline. Subsequently, by notice of June 2, 2017, the Siting Board extended the comment deadline on the PSS to June 15, 2017.

If you have any questions regarding these comments, please feel free to contact me at (518) 408-5754 or jonathan.binder@dec.ny.gov.

Sincerely,

/s/

Jonathan A. Binder
Associate Attorney

cc: Party List, Case 16-F-0267
A. Cerbin, DPS
R. Edick, Project Manager, DEC DEP



Specific Comments:

1.3 Potential Facility Impacts and Avoidance Measures

This section should include discussion of impact avoidance, minimization and mitigation measures for direct and indirect loss of habitat, and direct mortality of state and federally listed threatened and endangered species (T&E), New York State Species of Concern (SCC), and State Species of Greatest Conservation Need (SGCN). Examples of such measures include date restrictions on construction activities to avoid impacts to breeding birds and bats, re-siting or removing turbines from occupied habitat or other sensitive areas, and turbine curtailment at certain times and under certain environmental conditions to avoid or minimize direct impacts to bats.

2.9 Alternatives (Exhibit 9)

2.9.2 Comparison of Advantages and Disadvantages of Proposed and Alternative Locations

2.9.2.5 Environmental Impacts

“Typical impacts” should also include direct mortality of bats.

2.9.2.15 Alternative Turbine Layouts

The list of factors considering during the layout design process should specifically include the impacts to sensitive or rare natural communities, wildlife, and wildlife habitat, particularly habitat known or suspected to be utilized by federally and state-listed T&E species, SCC, and SGCN.

2.11 PRELIMINARY DESIGN DRAWINGS [EXHIBIT 11]

2.11.1 Site Plan

Design drawings should demonstrate that the project has been designed to co-locate project components to the maximum extent practicable (e.g., collection lines and access roads), and minimize fragmentation of forests and other habitat areas.

Wetland and stream impacts should be shown on the site plan together with all project elements that involve any potential ground disturbance, grade changes, change to runoff patterns and the construction of any facilities.

2.11.7 Typical Design Detail Drawings

Culverts need to be designed for a 100 year storm event, and where it is determined that stream continuity must be maintained, designed to incorporate specifications such

as those described in DEC's Stream Crossing Guidelines, available at:
<http://www.dec.ny.gov/permits/49060.html>.

2.22 Terrestrial Ecology and Wetlands (Exhibit 22)

2.22.2 Impact to Plant Communities

This section should clarify that the Invasive Species Prevention and Management Plan (Invasive Species Control Plan) will address measures to prevent the introduction of and control the spread of non-native invasive plants, insects, and pathogens. An Invasive Species Prevention and Management Plan will address the species listed in 6 New York Code Rules and Regulations (NYCRR) Part 575 and be included in the Application. Specifically, the Invasive Species Prevention and Management Plan will include the following:

- 1) A summary of the survey methods the Applicant used to identify and mark existing non-native invasive plant and insect species within the Facility site;
- 2) Specific methods the Applicant will use to ensure that imported fill and fill leaving the Facility site will be free of non-native invasive plant and insect species to the extent practicable;
- 3) Specification on how fill materials to be placed within the Facility site will be free of non-native invasive plant and insect species or only used within the areas free of non-native invasive plant and insect species infestation;
- 4) Proposed Facility site grading and erosion and sediment control methods that will be used to prevent the introduction, spread or proliferation of non-native invasive plant and insect species to the extent practicable;
- 5) Details of procedures for preventing the spread of invasive insects and diseases, such as the emerald ash borer and oak wilt, and a discussion of how the Applicant will comply with the state quarantine and protective zones, where applicable, from the Facility site;
- 6) Implementation plans for ensuring that equipment and personnel arrive at and depart from the Facility site clean and free of non-native invasive plant and insect species;
- 7) A detailed description of cleaning procedures for removing non-native invasive plant and insect species from equipment and personnel, and properly disposing of materials known to be or suspected of being infested;
- 8) Description of the Best Management Practices (BMP) or procedures that will be implemented, and the education measures that will be used to educate workers;
- 9) Detailed description of a minimum 5-year post-construction monitoring plan and survey measures and procedures for revising the Invasive Species Prevention and Management Plan in the event that the goals of the initial plan are not met within a specified timeframe; and
- 10) Anticipated methods and procedures used to treat non-native invasive plant and insect species that have been introduced or spread as a result of the construction, operation, or maintenance of the Facility.

2.22.4 Characterization of Vegetation, Wildlife and Wildlife Habitats Wildlife

Mammals

Although the bat surveys conducted in 2016 were based on the U.S. Fish and Wildlife Service (USFWS) 2016 Range-Wide Indiana Bat Summer Survey Guidelines, considering this project a linear project does not provide a sampling level of effort sufficient to determine probable presence/absence of the target species in such a large and forested project area.

Birds

In addition to the sources of information mentioned in this section regarding birds occurring in or near the project area, other sources of information that should be used to inform on bird species presence and use of the site should include: DEC and USFWS staff; New York Natural Heritage Program reports; Hawk Migration Association of North America; eBird; and reaching out to local birding groups for information on recent and historical occurrences.

Upland sandpipers and other sensitive grassland bird species were discussed at the February 17, 2017 call between DEC and the Applicant. The breeding bird surveys recommended by DEC for 2017 are intended to target all rare and state-listed grassland breeding birds, not just upland sandpipers.

2.22.6 Impacts to Vegetation, Wildlife, Wildlife Habitats, and Wildlife Travel Corridors

The Applicant should also consult directly with DEC and USFWS for information on the presence or likelihood of occurrence of listed, rare, and sensitive T&E species, SCC, and SGCN.

2.22.7 Measures to Avoid or Mitigate Impacts to Vegetation, Wildlife, and Wildlife Habitat

The word “Minimize” should be included in the title of this section. This section should also include a description of measures that will be implemented to avoid and minimize operational impacts to wildlife, including but not limited to turbine curtailment at certain times and under certain environmental conditions. The Applicant should also include a plan addressing the control of non-native invasive species during development, construction, operation, and maintenance of the project. When assessing potential and expected impacts to vegetation, wildlife, and wildlife habitat, every effort must be made to first avoid all impacts. Any impacts that cannot be avoided must then be minimized to the greatest extent possible. Mitigation for impacts is considered only after all possible avoidance and minimization efforts have been undertaken.

2.22.8 Avian and Bat Impacts, Post-Construction Monitoring and Mitigation for Proposed Wind-Powered Facilities

2.22.8.1 Avian and Bat Impacts

A discussion and evaluation of all potential direct and indirect cumulative impacts to birds, bats, and other wildlife, and their habitats, as a result of the construction, operation, and maintenance of the project should include an estimate of bird and bat fatalities, as well as direct habitat loss (development/clearing/change in vegetation) and indirect habitat loss (avoidance/edge effects). In addition to conducting a cumulative impact analysis utilizing data from across New York State and the region, the Applicant should separately consider all data from operating and proposed wind energy projects located in the vicinity of the proposed project.

2.22.8.2 Avian and Bat Post-Construction Monitoring

This section should note that the final post-construction monitoring plan developed between the Applicant, DEC, and USFWS will be in place prior to the start of turbine operation.

In addition to bird and bat impact evaluation and monitoring, section 2.22.8 should also include a commitment to and description of a plan to avoid, minimize and mitigate for impacts to wildlife. This should include acknowledgement that construction, operation, and maintenance of the project must comply with the substantive requirements of 6 NYCRR Part 182 for avoiding, minimizing and mitigating for impacts to state-listed threatened and endangered species.

2.22.9 Map Showing Delineated Wetland Boundaries

The Applicant, upon the completion of field wetland delineation activities, will submit a report to the regional DEC Bureau of Habitat staff and the U.S. Army Corps of Engineers (USACOE) that includes site plans (1":50' scale) for all field delineated wetland boundaries within 200' of any proposed grading, filling, excavation, vegetative clearing or facility construction, and will also facilitate the confirmation of the field delineated wetland boundaries by regional DEC Bureau of Habitat and USACOE staff. This information needs to be provided in a timely manner prior to snow cover, as snow and out-of-growing-season timing can make accurate wetland delineation difficult, if not impossible. DEC recommends that the USACOE be consulted for their concurrence with delineations performed on wetlands that are not state-jurisdictional.

2.22.14 Measures to Avoid/Mitigate Wetland Impacts

The word "Minimize" should be included in the title of this section. As mentioned in comments above on Section 2.22.7, attempts must be made to first avoid all impacts to wetlands followed by minimization of unavoidable impacts, before mitigation is considered.

General Comments

Shapefiles suitable for use in Geographical Information System (GIS) software via ESRI's ArcGIS suite of software (e.g. ArcMap) containing all components as described in DEC's *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects* (June 2016) should be submitted to DEC as soon as possible but not later than 60 days before the Applicant submits and Article 10 Application. Shapefiles should depict the location of all Facility components including (separately): extent of current Facility site; turbine locations; new and existing access and maintenance roads; electric collection and transmission lines (specified above ground and/or underground); laydown and storage area(s); substation(s); temporary and permanent meteorological tower(s); any other temporary or permanent infrastructure constructed in support of the Facility; all areas to be cleared around turbines, access roads, electric lines, and all other Facility components.

Additionally, shapefiles showing all wildlife survey locations, including (separately): breeding bird survey transects; eagle/raptor survey locations; winter raptor survey locations and driving routes; viewsheds for eagle and winter raptor observation points, indicating the area visible from each point; bat acoustic monitoring and/or mist net locations; radar unit location; and aerial nest survey area and transects. Shapefiles will be considered business confidential and not shared outside of the agency staff involved in reviewing this project.

Draft reports of all bird, bat, habitat, and wetland surveys should be submitted to DEC at least 60 days before the Applicant submits an Article 10 Application. This submission should include shapefiles with information on any state-listed species observed on site, including: species; number of individuals; all dates individuals were observed; all locations where individuals were observed; behaviors observed; flight path; any other observational data as requested by NYSDEC during discussions of pre-construction survey efforts.

2.23 WATER RESOURCES AND AQUATIC ECOLOGY [EXHIBIT 23]

2.23.2 Streams, Potential Impacts to Streams

Culvert placement specifications must be described/enumerated and detail expected flow calculations, demonstrate culvert capacity with BMP considerations for culvert placement (see comment on 2.11.7, Site Plan, above). The feasibility of using trenchless stream crossings should be assessed for all streams proposed to be crossed for such purpose, particularly at the protected streams identified above.

Appendix G Deer River Wind Project Bat Survey Work Plan

2.0 Bat Presence-Absence Survey

2.1 Study Design

The telemetry data mentioned in this section only refers to the discrete locations where female Indiana bats (*Myotis sodalis*) have been documented at maternity roost trees. That telemetry data covers only the summer breeding period and does not provide information on foraging habitats or elevations above 900 feet that may be used by male or female Indiana bats during spring dispersal or fall migration times.

While it is true, that if followed strictly, the USFWS summer survey guidelines would require a level of effort that would be difficult to attain, the level of effort prescribed in this study plan is much less than half of the level of effort recommended by those guidelines. Depending on the results of this study as it is designed and any actions taken as a result of the study findings (e.g. turbine curtailment under certain environmental conditions), additional sampling effort may or may not be needed.