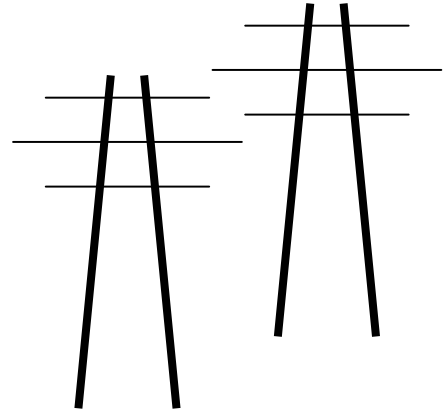


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December 1, 2014

Deanne Endrizzi
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U.S. Fish and Wildlife Service
5600 America Boulevard West, Suite 990
Bloomington, MN 5437-1458

via email: deanne_endrizzi@fws.gov

Mags Rheude
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4101 American Boulevard East
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via email: margaret_rheude@fws.gov

RE: FOIA Request – Consultation and Documentation of Eagles
Black Oak/Getty Wind Projects Certificate of Need and Siting Permit
PUC Certificate of Need Docket CN-11-471
PUC Siting Docket: WS-10-124- & WS-11-831)

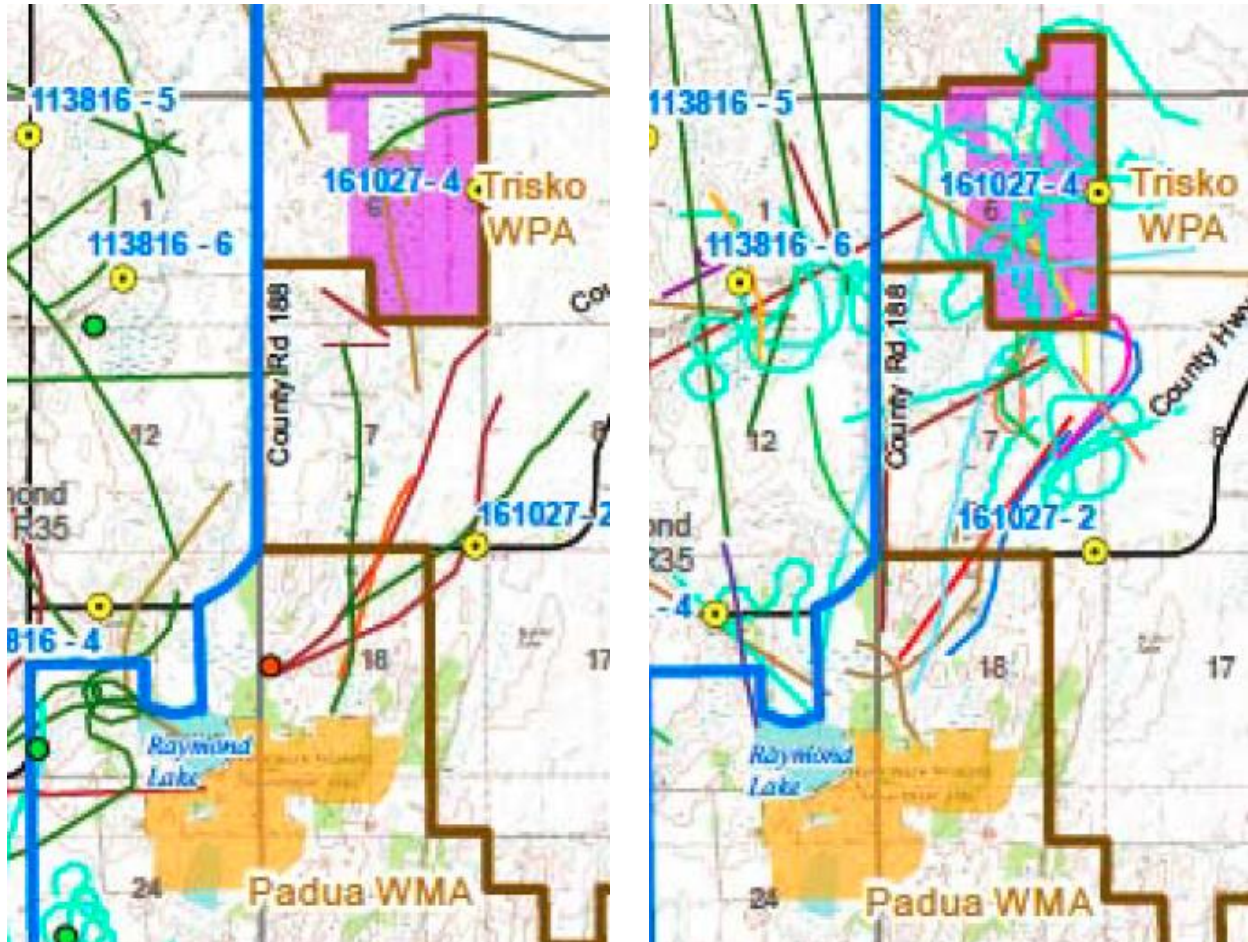
Dear Ms. Endrizzi and Ms. Rheude:

I have been retained by residents near and within the Black Oak and Getty wind project footprints to represent them before the Public Utilities Commission, first regarding amendment of the Siting Permit, and now in the Certificate of Need docket. Attached please find the project Avian and Bat Protection Plan, and the Revised plan, also DNR Comments thus far.

At this time, I make this FOIA request on behalf of my clients for all records of the Applicant's consultation with USFWS, comments offered by USFWS regarding the above-entitled project, and USFWS documentation of eagles in the project area, both within the footprint and within a five mile radius. If I should direct this request to someone else at USFWS tasked with handling FOIA requests, please let me know.

In reviewing the project record, I have not seen any USFWS Comments filed or attached to other project documents, although there are references to consultation. Perhaps comments have not been filed in the docket record.

I've also noted that there is an eagle nest smack dab in-between the two project footprints and my clients state there is one to the northwest of the documented eagle nest. This is the consultant's (HDR) depiction of the location of the eagle nest and flight paths observed. In the maps below, the red dot between the Getty (brown) and Black Oak (blue) projects is the eagle nest, and the red lines are observed eagle flight paths. Upon information and belief, there is another eagle nest to the northeast, thus far undocumented..



See Attached Revised Avian and Bat Protection Plan, Appendix B, Avian Use and Assessment Report on the Black Oak/Getty Wind Development Sites, Figures 4 and 5.

My client's particular concern is in the northern area of section 18, shown on the map above, just above the brown area marked as Padua WMA. One client member, Barbara Jennisson, notes that USFWS did extensive rehabilitation work building ponds on their land in 1998, above the Padua WMA, and south of Co. Rd. 28, the brown line on the north edge of Section 19. This is an area where birds congregate in great numbers, yet this area has not been delineated on any project map. Further to the northeast, there is another bald eagle nest, also not noted on the project maps. Residents have frequently observed Trumpeter Swans in the same area, which should be noted in the report and ABPP. Because this area was rehabilitated by USFWS, the Jennissons believe that USFWS should be notified of this project and comment on the potential avian impacts if turbines are sited as proposed by the Applicants.

Regarding Bald Eagles, the Revised Avian and Bat Protection Plan states:

Bald Eagle

The DNR currently lists the bald eagle as of Special Concern but is proposing to upgrade the species to “no status.” The bald eagle breeds across much of North America and is known to have a presence in every U. S. state except Hawaii. Bald Eagles that reside in the northern U. S. and Canada migrate to the warmer southern climates of the U.S. during the winter. However, nesting pairs have been known to reside near nest sites throughout the winter. Bald eagle characteristic breeding habitat includes super-canopy trees such as red and white pine near lakes and rivers that support an abundant supply of fish. While most nest sites are located in areas with minimal human activity, some eagles have adapted to human presence and nest near human dwellings and other features such as railroads, highways, and boat landings. The annual life of bald eagles can be broadly categorized into nesting and non-nesting periods. The nesting period varies by latitude; in the Midwest, it begins with courtship and nest building in late January and early February and ends when the young fledge by late July. The non-nesting period is thus from August through mid-January.

One nesting pair of eagles occurs in the NW ¼ of Section 18 of Getty Township (Figure 4). Nest observations of this pair throughout the breeding season indicated the pair successfully raised at least one young from this site. A total of 18 bald eagles were observed throughout the migratory season from April 1 through May 5, 2011. These observations were primarily of the resident adults tending to their nest and young, or engaged in foraging forays. Two juvenile birds and a sub-adult bird were also observed perching or following the northward migration of waterfowl. On one occasion, a single adult from the Getty nest shadowed the flight of a sub-adult eagle while it was within 1.5 miles of the active nest. Juvenile eagles were seen conducting feeding forays that originated near waterfowl concentrations or were seen soaring from the northeast to the west end of the Sites. The presence of an active nest, eagle foraging, and migration through the Sites will require further analysis under provisions of the BGEPA. The Draft Eagle Conservation Plan Guidance (USFWS January 2011) indicate that further assessment of eagle use within 10 miles of wind farm projects may be required to identify and quantify risk associated with wind development at this site.

Revised Avian and Bat Protection Plan, Appendix B, Avian Use and Assessment Report on the Black Oak/Getty Wind Development Sites, p. 16-17. This report further states:

Raptor Collision Risk

Northern harriers and red-tailed hawks were the two raptors species that occurred with the highest frequency. These two species were often observed soaring over agricultural lands or grassland while foraging. Flight paths recorded during the spring of 2011 show no definite use patterns that would allow micro-siting to reduce potential impacts. The Black Oak/Getty Wind Farms raptor mean-use rates are among the lowest reported at ten sites reporting this metric across the U.S. (Chart 2). Six bald eagles flights were documented during the spring 2011 surveys and consist of four flights for foraging or territorial defense by the resident eagle pair and two by migratory eagles that were present only during April and May. Due to the low use of the Sites and the low frequency of mortality reported from other U.S. wind farms with similar use rates, impacts to raptors are expected to be minimal. Only 30 percent of the red-tailed hawk flights observed within the Sites occur within the RSZ. Total observations of red-tailed hawks were also in the bottom quartile of wind farms with recorded raptor use. The low relative use and reduced percentage of flights within the RSZ indicate that there will be a lower likelihood of red-tailed hawk mortality at this site than on other sites where this index was studied.

Id., p. 24.

Due to the absence of USFWS Comments in the record, and no clear statements regarding the results of any consultation with USFWS, we want to know you're the details of your agency's review of this project regarding potential impacts.

The "Residents of Getty and Raymond Townships" is an informal association of landowners operating with close to zero budget and would qualify for an exemption from fees associated with this FOIA request.

Please let us know if this project will require an eagle take permit.

My clients would also be most interested in scheduling a visit for USFWS staff to observe the activity at the eagle nests and other avian activity in the area.

Please let me know if you have any questions or require anything further.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law

cc: Residents of Getty and Raymond Townships