

Crowned Ridge Wind, LLC
700 Universe Boulevard
Juno Beach, FL 33408

July 8, 2019

VIA Electronic Mail

Kristen N. Edwards
Staff Attorney
South Dakota Public Utilities Commission
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Dear Ms. Edwards:

Thank you for forwarding the July 2, 2019 letter from the U.S. Fish and Wildlife Service (the USFWS), that was filed in Docket No. EL19-003. The purpose of this response is to elaborate on Crowned Ridge Wind, LLC's (Crowned Ridge) commitment to continued coordination with the Service, and also to address certain topics discussed by the Service in its letter.

By way of summary, this response shows the following:

- While the USFWS does not have jurisdiction over the Crowned Ridge Wind Project (Project), Crowned Ridge has voluntarily consulted with the USFWS for many years, most recently via email and telephone to discuss the issues raised in this letter on July 3, 2019;
- Crowned Ridge is committed to continue the voluntary consultation with the USFWS, including describing the commitments Crowned Ridge has made in this proceeding that address the items set forth in the letter. For example:
 - Crowned Ridge will avoid impacts to the Topeka Shiner;
 - Crowned Ridge will use seed mixes that incorporate vegetation that supports federally listed butterfly species during revegetation efforts in native prairie that occur in potentially suitable Dakota Skipper and Poweshiek Skipperling habitat;
 - Crowned Ridge will implement a Stormwater Pollution Prevention Plan (SWPPP) that addresses restoration of any disturbed areas following construction, including revegetating non-cultivated grasslands using a seed mix that is recommended by the

Natural Resource Conservation Service (NRCS), or other land management agency, unless otherwise agreed upon with the landowner in writing; and

- A 1.5 mile buffer from any known occupied bald eagle nest.
- Crowned Ridge’s voluntary consultation with the Service has been interactive. For example:
 - The Service approved the biologist and the protocols used to conduct the Dakota skippers and Poweshiek Skipperling survey; and
 - The Service also indicated to Crowned Ridge that Northern Long-Eared Bat is generally located in the Black Hills region, except for periods of migration where it is unlikely to occur at the Project.

Crowned Ridge has already reached out to the USFWS, and is confident it can provide the additional information to further demonstrate Crowned Ridge’s commitment to protect the environment.

By way of background, the NextEra Energy Resources, LCC (“NEER”) family of companies, which includes its indirect, wholly-owned subsidiary Crowned Ridge Wind, LLC (Crowned Ridge), have a long history of coordination with USFWS on its wind projects throughout the U.S. As the record in EL19-003 demonstrates, Crowned Ridge has coordinated with the USFWS for many years on the Project. For example, Appendix B of the Application (Ex. A1-B) shows that Crowned Ridge’s first coordination with the USFWS occurred in 2007 and Crowned Ridge has continued to coordinate with the USFWS throughout the development of the Project. Crowned Ridge remains committed to continuing coordination with USFWS, and reached out to discuss the letter last week, but was unable to reach USFWS personnel.

Crowned Ridge will continue, as would be the normal course of business on any NEER wind project, to voluntarily coordinate with the USFWS throughout the Project’s development, construction, and operation on the Crowned Ridge Wind project. For example, in its letter the USFWS requests that Crowned Ridge provide copies of post-construction studies. Crowned Ridge commits to provide these studies to the USFWS in the spirit of voluntary coordination, as the Service has no jurisdiction over the Project. In its letter, the USFWS acknowledges that the Project has been sited to avoid federal impacts, thus there is no federal nexus and jurisdiction over the Project. Therefore, while the USFWS’ citation in its letter to federal statutes and regulations may be informative for Crowned Ridge’s voluntary coordination with the USFWS, these legal authorities are not controlling or applicable to the Project.

The remainder of our response addresses the specific topics discussed by the USFWS. The purpose is to provide context and demonstrate Crowned Ridge’s commitment to working with the USFWS as well as state agencies on similar issues throughout the development process, and, if approved for a Facility Permit, the construction and operation of the Project.

Topeka Shiner

In its letter, the USFWS questions whether the Project will avoid impacts to the Topeka Shiner. As Crowned Ridge's Application at pages 11 and 70-71 indicate, Crowned Ridge is aware of the potential for Topeka Shiner to be found in the Project area, which includes the Willow and Stray Horse Creeks. Crowned Ridge plans to completely avoid potential impacts to the Willow and Stray Horse Creeks by boring under the streams. This avoidance measure will be included in the Wildlife Conservation Strategy that will be filed with the Commission prior to construction, and will also be communicated to the Service as a courtesy.

Dakota Skipper

In its letter, the USFWS questions whether the Project appropriately surveyed for the presence of Dakota Skipper and included an avoidance strategy. It is puzzling why the USFWS raised this concern. The Application clearly demonstrates that Crowned Ridge's surveying for the Dakota Skipper was conducted by a USFWS-approved biologist and in accordance with protocols approved by the USFWS. With respect to surveying, in Appendix C of the Application (Ex. A1-C) Crowned Ridge submitted a Dakota Skipper and Poweshiek Survey Report. The Report shows that Jake Powell of SWCA, a contractor for the Project, is a USFWS-approved biologist authorized to complete protocol-level surveys for Dakota Skippers and Poweshiek Skipperlings. Attachment A of the Dakota Skipper and Poweshiek Survey Report also describes concurrence *issued by the USFWS* that the required protocol proposed for survey use was appropriate and sufficiently based on USFWS requirements. The survey results that show no detections of either butterfly species were shared with the USFWS via email in January 2019, including a copy sent to Scott Larson of the Service. A copy of that report was also included as Appendix C of Application filed with the Commission in January 2019.

A summary of the findings regarding the absence of Dakota Skippers is set forth in Section 11.3.1.2.1 and Section 11.3.1.4.1 of the Application. These sections explain there is a small proportion of suitable habitat for Dakota Skippers within the Project area. Nonetheless, Crowned Ridge set forth an avoidance strategy to minimize any impacts to suitable habitat areas of the Dakota Skipper during the flight season in Section 11.3.2.1 and 11.3.2.5 of the Application. Further, Crowned Ridge committed to use seed mixes that incorporate vegetation that supports these prairie butterfly species during revegetation efforts in potentially suitable Dakota Skipper and Poweshiek Skipperling habitat areas. Crowned Ridge will ensure the USFWS understands we have properly surveyed and documented the lack of the presence of Dakota Skipper and our commitments to protect the Dakota Skipper, should it occur.

Tallgrass Prairie and Wetlands

In its letter, the Service asserts that not all wildlife habitats, such as grasslands and wetlands, were avoided by the Crowned Ridge Project. As the Application in Section 2.1 shows, Crowned Ridge is committed to avoiding and minimizing the impacts to grasslands and wetlands. Further, the Application sets forth an analysis of the potential presence of native prairie in Section 11.1.1 of the Application, showing approximately 47% of the Project area is grass/pasture and approximately 36% is in agriculture. The Project Construction Easement or subset of the Project area that will be potentially disturbed, is 26% in grass/pasture and 71% in agriculture that further demonstrates the Project's avoidance and

minimization efforts. Section 11.1.2 of the Application also states the permanent impact to grass/pasture is approximately 21.5 acres of the total 53,186 acre Project area or less than one tenth of one percent (< 0.004%). Further, as Crowned Ridge's Exhibit A70 shows, only 19 of the proposed 130 turbines impact native prairie as mapped by Bauman et al. 2016; and native prairie makes up approximately 17,889 acres of the Project area (Application at 50).¹ Of the 19 turbines on mapped native prairie, all 19 were sited due to minimize impacts on other environmental constraints, such as wetlands or cultural resources, or to incorporate landowner preferences not to have the turbine in land used to produce crops, or to incorporate specific turbine placement if the landowner only owned land in grasslands. Further, only 17 of the 19 turbine locations are actually located on native prairie based on field surveys that refined regional scale mapping of native prairie completed by Bauman et al. 2016 that was used in the preliminary analysis for the Project.

To minimize the impact to grasslands and native prairie, Crowned Ridge has committed to implement a Stormwater Pollution Prevention Plan that addresses restoration of any disturbed areas following construction. Crowned Ridge has also committed to address temporary impacts by revegetating non-cultivated grasslands using a seed mix that is recommended by the Natural Resource Conservation Service (NRCS), or other land management agency, unless otherwise agreed upon with the landowner in writing.

Project impacts to wetlands are described in Section 11.2.1 and avoidance and minimization measures are described in Section 11.2.2 of the Application. The Project committed to avoiding temporary and permanent impacts to wetlands and waters to the extent practical, including boring under potentially regulated features for collection lines and shifting roads for avoidance, where practical. The Project has also committed to keeping any unavoidable impacts below thresholds necessary to qualify for the conditions of the U.S. Army Corps of Engineers (USACE) Nationwide 12 permit for utility lines and associated facilities. The Project has further committed to a restoration process that will include revegetating native prairie areas with a seed mix recommended by NRCS unless otherwise agreed upon with the landowner.

USFWS Easements

The potential for Project impacts to USFWS easements are described in Section 10.2.1.1 and avoidance and minimization measures are described in Section 10.2.2 of the Application. The Project has avoided (1) all parcels with grassland or combination wetland/grassland USFWS easements on them, and (2) all protected basins within USFWS' jurisdiction. In fact, while there are turbines sited within a parcel containing a wetland easement, none of the turbines in that easement are sited on a wetland protected basin. As the USFWS specifically acknowledges in their letter, USFWS easements do not extend to the uplands on a USFWS wetland easement surrounding the protected basin and only cover the protected basin. The Project avoids all direct impacts to protected basins on USFWS wetland easements, which is documented in Section 2.1 of the Application.

¹ Bauman, P., B. Carlson, and T. Butler. 2016. Quantifying Undisturbed (Native) Lands in Eastern South Dakota: 2013. Brookings: South Dakota State University Extension.

As part of its continued coordination with the USFWS, Crowned Ridge will explain the Project's impacts on native prairie and the lack of turbine impacts to protected basins, and explain the commitments Crowned Ridge made in its Application and in the stipulated conditions proposed for adoption in EL19-003.

Grouse Leaks

The record in EL19-003 shows that Crowned Ridge has made more specific commitments to protect the Grouse Lek than is claimed in the USFWS letter. Crowned Ridge has made the following commitments: (1) to avoid construction activities within 2 miles of known leks during the lekking period (March 1 to June 30) (Ex. A42 at 13) and (2) to impose a 0.3 mile buffer for turbine siting from any known historic lek (Evid. Hrg. Tr. at 196). Also, Crowned Ridge used survey data of known historic leks when siting its infrastructure, and has only sited 17 of the 130 turbines on native prairie, both of which help protect grouse leks. In addition, Crowned Ridge is unaware of any empirical peer-reviewed data reviewing the effects of wind turbine development on greater prairie-chicken or sharp-tailed grouse activities at lek locations in the Upper Great Plains (including South Dakota, North Dakota, and Minnesota) supporting the hypothesis that prairie grouse exhibit avoidance or displacement behavior around turbines. The avoidance and minimization efforts of the Project were also acknowledged by Staff witness Kirschenmann of the South Dakota, Department of Game, Fish, and Parks during the evidentiary hearing. Evid. Hrg. Tr. at 500 (June 12, 2019). During Crowned Ridge's continued coordination with the USFWS, it will explain these commitments to protecting leks.

Line Marking

The USFWS letter questions whether the Project used Avian Powerline Interaction Committee's (APLIC) guidelines in the planned construction of transmission for the Project. The transmission lines were approved by Commission in EL17-050 and EL18-018, and Crowned Ridge and Crowned Ridge Wind, II, LLC, respectively agreed to design the transmission lines following APLIC suggested practices. Crowned Ridge, during its coordination with USFWS, will explain this commitment in further detail.

Northern Long-Eared Bats

In its letter, the USFWS recommends targeting suitable habitats for bat surveys and surveying an increased number of those small, isolated, scattered patches of forest to detect a bat species that prefers trees and does not often utilize open areas. Crowned Ridge's Application (in Section 11.3.2.1) acknowledges that removal and fragmentation of forested patches could impact the Northern Long-Eared Bat, if present. As explained further in Section 11.3.2.4 of the Application, Crowned Ridge minimized tree clearing to avoid impacts to potential bat habitat, if occupied. In support of appropriate implementation of avoidance and minimization measures for bats, Crowned Ridge conducted a habitat suitability assessment (Appendix F to the Application) and an acoustic survey (Appendix G to the Application).

The intent of the habitat assessment was to determine the availability and suitability of bat habitat within the study area and used that information to determine a likelihood of occurrence for listed bat

species. The definition of “suitable habitat” was specific to each species. Suitable summer habitat for northern long-eared bats, as defined by the available, peer-reviewed literature, makes up less than 1 percent of the Project area. The known distribution of Northern Long-Eared Bats in South Dakota, according to coordination with USFWS, is primarily limited to the Black Hills region in the summer and winter, though a potential migrant throughout the State. Thus, it is reasonable to conclude that the species has a low likelihood of occurrence at most within the Project area. Email correspondence from Ms. Natalie Gates of the USFWS to SWCA’s biologist Drew Carson on June 6, 2018 regarding the Project is consistent with this conclusion and describes no known hibernacula of Northern Long-Eared Bats in South Dakota outside of the Black Hills, and that if the species were to occur in the Project area, it would likely be as a migrant only. Correspondence attached.

The intent of the acoustic surveys was to assess relative bat activity in habitat where construction of turbines is likely (i.e., open agricultural land) and determine if the activity is similar to that at operational wind energy facilities in the same region. This survey showed that a reasonable conclusion is that relative activity in habitat where turbines are planned for construction is lower than that at operational wind energy facilities in the region. Crowned Ridge will explain the results of these surveys and its avoidance and minimization measures to address potential Northern Long-Eared Bat habitat during its continued coordination with the Service.

Eagles

In Section 11.3.2.5 of its Application, Crowned Ridge committed not to site a turbine within 1.5 miles of a known occupied bald eagle nest. This buffer is comparable to the 1.6 mile buffer recommended by the USFWS in the Region 3 Midwest Wind Multi Species Habitat Conservation Plan (HCP) for Wind released in April 2016. This USFWS Plan describes expected measures for an applicant who is pursuing a voluntary HCP under Section 10 of the Endangered Species Act and although not the intention for Crowned Ridge, represents the best available science to inform turbine siting. As with all topics discussed in the July 2, 2019 Letter, Crowned Ridge will continue to coordinate with the Service on eagles.

Again, thank you for the opportunity to reiterate Crowned Ridge's strong commitments to environmental protection.

Sincerely,

/s/

Kimberly Wells, PhD
Senior Manager, Environmental Services
NextEra Energy Resources, LLC
On behalf of Crowned Ridge Wind, LLC

Attachments: Email correspondence from USFWS to SWCA

From: Gates, Natalie <natalie_gates@fws.gov>
Sent: Wednesday, June 6, 2018 3:58 PM
To: Kely Mertz <KMertz@swca.com>
Cc: Drew Carson <DCarson@swca.com>
Subject: Re: [EXTERNAL] South Dakota project area

At this time, the only known NLEB hibernacula in South Dakota are in the Black Hills, and I'm not aware of any maternity roosts in the state (though there almost certainly are some in the Hills and could be others so far undetected).

So while the bat could occur in the area, its more likely to be migrant rather than breeding or hibernating.

*Natalie Gates / U.S. Fish and Wildlife Service / Ecological Services South Dakota Field Office
420 South Garfield Avenue, Suite 400 / Pierre, South Dakota 57501
Phone: 605-224-8693, Ext. 227 / Fax: 605-224-1416
<http://www.fws.gov/southdakotafieldoffice/>*

On Wed, Jun 6, 2018 at 12:54 PM, Kely Mertz <KMertz@swca.com> wrote:

Hi Natalie,

Can you share whether or not either of the attached polygons are within 0.25 mile of a known northern long-eared bat hibernacula or within 150 feet of a known maternity roost tree? Please note that these polygons are not final project boundaries.

Thank you,

Kely

Kely Mertz

Senior Project Manager

SWCA Environmental Consultants

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION)	
BY CROWNED RIDGE WIND, LLC FOR A)	EL19-003
PERMIT OF A WIND ENERGY FACILITY)	
IN GRANT AND CODINGTON COUNTIES)	CERTIFICATE OF SERVICE
)	

I hereby certify that true and correct copies of the Applicant's response to the USFWS letter, with attachment, in this matter were served electronically to the parties listed below on the 8th day of July, 2019, addressed to:

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