



*Bringing back the birds*

Hon. Kathleen H. Burgess, Secretary  
Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

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PUBLIC SERVICE  
COMMISSION  
EXEC-FILES-ALBANY

Dear Ms. Burgess:

I am writing to provide comments on Lighthouse Wind LLC's Matrix of Individual Responses to Comments received on Case Number 14-F-0485.

American Bird Conservancy's (ABC's) comments were specifically addressed on five occasions in the document, and I will focus my responses on those comments.

**Comment I.D. 6.2: (Siting of the project at least 6 miles from Lake Ontario):** The developer disagreed with ABC's recommendation that the project needs to be sited farther from Lake Ontario. They also suggested that we misinterpreted the study by Nature Conservancy, yet the author of that peer-reviewed study fully recognized the importance of this area to both migrating birds and to breeding grassland bird species. Some 52,000 plus birds were documented during some 2,000 hours of observation and 1,385 site visits. The six-mile set back recommendation comes from data collected during the fall migration. ABC notes that grassland birds, particularly those dependent on cryptic coloration and behavior during breeding, can be displaced by wind turbines (<http://onlinelibrary.wiley.com/doi/10.1111/cobi.12569/abstract>).

We don't disagree that fine-scale tuning of the plan (i.e. micro-siting of turbines) could potentially help to reduce the projected impacts, but the fact that vast numbers of migratory and resident birds use this area is a major cause for concern, one that is apparently shared by the U.S. Fish and Wildlife Service. In a letter to the developers, they stressed that this is an area of high avian activity and the company was warned that great caution was necessary. The developer chose to proceed anyway. I note that ABC recently developed a list of 10 of the most poorly-sited wind energy projects in the United States from the perspective of bird conservation, and this project is on that list. That means that much public attention is going to be focused on this project and the science going into its evaluation.

**Comment 6.3: (Effectiveness of mitigation):** The developer suggests that we contradict our statement that proper siting is the best form of mitigation by our also stating that little is known about the efficacy of various other mitigation methods. We disagree. We stand by our statements, as similar statements have been made by the Department of Energy. Much of this mitigation research is now underway by USGS and others, but one can't say definitively that a particular method is going to be effective at reducing bird or bat mortality until it has been tested under a wide-range of environmental circumstances. If mitigation methods are suggested by the developer, then their use should be supported by peer-reviewed studies verifying their effectiveness in reducing bird and bat kills. Even this involves predictions based on best guesses, which, if the project is given approval, makes the post-construction mortality studies even more important.

The developer could promise to have all mortality data collected by third party, independent experts and pledge to make all of this data transparent and open to the public. If, as they say, mortality is going



to be very low or non-existent, then they should be willing to accept these provisions, which, by the way, are *required* in the state of Hawaii (the only state in which this is currently the case). However, there should also be consequences laid out should their theoretical projections prove to be wrong. For example, further mitigation (e.g., seasonal shutdowns during peak migration) and compensation should be required in the event that the developer's assumptions prove to be incorrect and large numbers of birds and bats are killed. Perhaps a total shutdown of the facility should also be an option, as should prosecution under the ESA and BGEPA, if mortality is much higher than expected. This is clearly an area of high avian activity, so the developer should be willing to stand by its predictions that its impacts will be minor. The only way to ensure that this is the case is through independent monitoring of bird and bat deaths and transparency.

**Comment I.D. 6.4 (cumulative impacts):** We were happy to see that the developer intends to address the potential cumulative effects of their project when added to the other anthropogenic and natural causes of mortality for migratory birds. But we also note that methods for doing such analyses are still in their infancy and are largely untested. We therefore look forward to seeing and reviewing their analysis. They stress the use of mitigation to offset unavoidable losses of birds due to collisions with turbines and other associated infrastructure. However, as we pointed out in our comments, other than proper siting, few mitigation methods used by wind developers have been fully tested for their efficacy. We were also happy to learn that no above ground power lines and towers and very few roads would be part of the project. However, it does not matter whether the project is located in a "primarily agricultural landscape." Such landscapes are often heavily used by birds, and could place them at even more risk, as they stop to feed and rest before heading off on their long and arduous journeys. The bottom line is: if a large number of federally-protected birds (migratory birds, eagles, ESA-listed) fly through the area in spring and summer, risk levels will be high. That is why Bird-Smart wind energy *avoids* major migratory routes, key breeding habitat and other sensitive habitats that attract birds, such as wetlands (<http://abcbirds.org/program/wind-energy/bird-smart-strategies/>).

While we applaud Lighthouse Wind Energy LLC's efforts to study the potential impacts of this project on wildlife and to adhere to all legal guidelines, we still question whether our current voluntary guidelines are working to protect ecologically important birds and bats from the rapidly developing wind industry. We also wonder whether the studies being conducted by paid consultants to the wind industry are going to reveal the real risks to birds and bats. The very fact that it is the developer's paid consultants conducting these studies is a direct conflict of interest. Clearly, the developer's goal is to get the project approved, start construction and begin producing energy. We are not suggesting that this particular wind developer is being disingenuous, but just pointing out that others have been caught purposely downplaying their potential impacts on wildlife so that their projects would be approved ([http://www.philly.com/philly/opinion/20151026 Go green and protect birds.html](http://www.philly.com/philly/opinion/20151026_Go_green_and_protect_birds.html)). Once up, these turbines are not coming down, regardless of their post-construction impact on wildlife (see Altamont, CA as an example). Phase I of the Kaheawa Wind Energy Project on Maui, Hawaii underwent an extensive preconstruction risk assessment and Habitat Conservation Plan process and, as of 2014, had still killed 22 Nene Geese and 7 Hawaiian Petrels, both endangered species.

**Comment I.D. 6.5 (nocturnal radar studies):** We were happy to discover that the USFWS has conducted appropriate, independent radar studies in the area (near Wilson, NY) that could shed light on the real risks to birds in the region. Such studies must include not only density and movement direction, but also altitude. Wind energy developers often claim that migrating birds are at low risk because they fly mostly

above the rotor sweeps of turbines. However, their conclusions are often based on radar studies that did not have the capacity to measure altitude of migrating birds. When appropriate studies are conducted, migrating birds are often detected flying within the rotor sweep area of turbines, as they descend or ascend to rest, avoid bad weather (windy and overcast) and feed, and then resume flight. This was one of the factors that allowed ABC to shut down the poorly sited wind energy project in Camp Perry, Ohio near the Lake Erie shoreline (<http://www.toledoblade.com/Energy/2014/01/30/Camp-Perry-shelves-plan-for-198-foot-wind-turbine.html>). The Ohio Air National Guard's biological consultants maintained that migratory birds never descended to heights within the rotor sweep. However, USGS radar studies showed that birds were frequently descending to lower heights, thus putting them at considerable risk of collisions.

**Comment I.D. 6.6 (bird mortality):** The developer not unexpectedly tries to downplay the possible impact on birds from this project. ABC never suggested that millions of birds would be killed at this specific project, but rather that millions of birds could be put at risk over the course of the project. How many birds would be expected to pass through this area over the course of 30 years?—a lot. There is no doubt that wind turbines are killing hundreds of thousands of birds annually in the United States based on Smallwood's (Smallwood KS. 2013. Comparing bird and bat fatality-rate estimates among North American wind-energy projects. *Wildlife Society Bulletin* 37: 19–33) and others' studies. However, there are vastly more turbines now than there were in 2011–2012 when this and other mortality studies were conducted, and no one has a good idea of exactly how many birds are currently being taken. Add to this the fact that the Smallwood's and other studies were based on industry-collected data using very different methods, and we believe that the numbers have been grossly underestimated.

If the developer is so confident that few, if any federally-protected birds and bats are going to be killed by the Lighthouse project, then this could be easily resolved through the following: (1) that if permits are granted to build the facility, that (1) all post-construction bird and bat mortality data will be collected by third-party, independent experts using standardized survey methods, (2) that the mortality figures would be transparent and open for public review, and (3) that if large numbers of birds and bats are being taken, that the company will compensate the public for their loss, and shut down their turbines during peak spring and fall migration each year they are in operation. Prosecution and a complete shutdown of the facility should also be kept open as options, should the facility kill large numbers of federally-protected birds. Based on available data, ABC believes that the Lighthouse Wind Energy Project would be among the worst-sited in North America, and until proven otherwise by independent, objective studies, we will continue to oppose its construction based on its projected impacts on bird populations.

Sincerely,



Michael Hutchins, Ph.D.  
Director, Bird-Smart Wind Energy Campaign