

Finding of No Significant Impact

Issuance of a Permit under section 10(a)(1)(B) of the Endangered Species Act to Criterion Power Partners, LLC

The U.S. Fish and Wildlife Service (Service) proposes to issue an incidental take permit (ITP) to Criterion Power Partners, LLC (CPP) in association with the implementation of a habitat conservation plan (HCP) for the federally endangered Indiana bat (*Myotis sodalis*). The CPP is a wholly owned subsidiary of Constellation Holdings, LLC, which is a subsidiary of Exelon Generation Company, LLC.

As part of the evaluation of whether to issue an ITP, the Service is required to analyze the impacts of permit issuance in accordance with the National Environmental Policy Act of 1969 (NEPA). To comply with NEPA, the Service prepared an environmental assessment (EA) that evaluates the potential direct, indirect, and cumulative effects of the proposed action (issuance of the ITP with implementation of the HCP), a status quo (no action) alternative, a full nighttime operational curtailment alternative, and an alternative that contemplates issuance of the ITP for only a 5-year period. The HCP covers operation, maintenance, and decommissioning of the 28-turbine Criterion wind energy facility in Garrett County, Maryland. The HCP describes measures CPP will implement to avoid, minimize, mitigate, and monitor the potential impacts to the Indiana bat. The requested duration for the ITP is 20 years.

Following a comprehensive review and analysis of the HCP and the findings presented in the EA, the Service has selected the proposed action as the preferred alternative. The proposed action provides the most conservation value to the covered species in the context of CPP complying with the requirements of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA).

The environmental impacts of the proposed action have been considered within the EA, and the environmental effects have been shown to be minor and insignificant to the human environment, in consideration of the context and intensity of the project (40 CFR 1508.27). The CPP's wind energy facility (including all turbines) has already been constructed and is operational. Therefore, the effects associated with the proposed action (i.e., issuance of an ITP contingent on implementation of the HCP) are related to impacts from project operations, maintenance, and decommissioning. Of these activities, only impacts from project operations are anticipated to result in the incidental take of listed species; therefore, that is the activity that will be covered by the ITP. Except for impacting wildlife resources, project operations are not anticipated to impact resources affecting the human environment (e.g., land use, geology, wetlands, vegetation, air quality, cultural resources, visual, health and safety, noise, Federal Aviation Administration (FAA) transportation, and communication signals). While impacts to wildlife resources will be minimized via HCP commitments, project operations are anticipated to have some adverse effects to Indiana bats, non-ESA-listed bats, and some birds. Mitigation provided for in the HCP is anticipated to have beneficial effects to Indiana bats and non-ESA-listed bats. As described in the EA, these operation-related impacts are considered minor at the local scale and insignificant at the broader population scale. Maintenance and decommissioning activities are not anticipated to have impacts on resources affecting the human environment (e.g., land use, geology, wetlands,

vegetation, air quality, cultural resources, visual, health and safety, noise, FAA transportation, and communication signals).

Based on review of all of the impacts described in the EA and the Council on Environmental Quality guidance on determining significance (40 CFR 1508.27(b)(1) through (10)), the Service has concluded that an EA is the appropriate instrument for this project. The Service made this determination based on the following:

- The proposed action does not affect public health or safety;
- Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas are not affected;
- The effects of the proposed action are not highly controversial;
- The impacts from the proposed action are not highly uncertain; nor do they involve unique or unknown risks;
- The proposed action is not establishing a precedent for future actions;
- The cumulative effects from the proposed action are not significant;
- The proposed action will not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources;
- Implementing the proposed action (i.e., issuance of an ITP contingent on implementation of the HCP) has sufficiently minimized and mitigated the effects on Indiana bats, and the proposed action does not affect designated Indiana bat critical habitat;

A notice of availability for the draft EA and ITP application was published in the *Federal Register* on July 31, 2012. Ten letters were received during the 60-day public comment period. As applicable, the draft EA and HCP were revised to reflect comments received. Service responses to all substantive comments are included in the final EA.

Based on review and evaluation of the attached EA and supporting documents, the Service has determined that the action is not a major Federal action that would significantly affect the quality of the human environment, pursuant to the provisions of section 102 (2)(c) of the NEPA. As a result, the preparation of an environmental impact statement for the proposed action is unnecessary.

ACTING


Assistant Regional Director
Northeast Region

1-29-14
Date

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