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To Lynn M Lewis/R3/FWS/DOI@FWS, Lisa  
Mandell/R3/FWS/DOI@FWS  
cc Lori Pruitt/R3/FWS/DOI@FWS  
bcc  
Subject Duke Energy HCP renewal

## MEMORANDUM

DATE: March 8, 2011

TO: Lynn Lewis, ARD, FWS, RO, Twin Cities, MN

FROM: Scott Pruitt, Supervisor, FWS, BFO, Bloomington, IN

SUBJ: Duke HCP Renewal

ATTN: Lisa Mandell, FWS, RO, Twin Cities, MN

The Bloomington Field Office has reviewed Duke Energy Corporation's renewal request for their least tern HCP. We find their renewal request is complete, meets the low effect HCP criteria (as was determined for the original HCP), and that actions proposed under the renewal request are covered by the Biological Opinion for this HCP.

Recommendations for changes to permit language will be sent via email to Lisa Mandell.

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## SCREENING FORM FOR LOW-EFFECT HCP DETERMINATIONS

### I. Project Information

- A. **Project name:** HCP for Cinergy's Gibson Generating Station
- B. **Affected species:** interior least tern (*Sterna antillarum*)
- C. **Project size (in acres):** 6,826 acres
- D. **Brief project description including minimization and mitigation plans:**

Since 1986, when endangered interior least terns first nested at the Gibson Generating Station in Gibson County, Indiana, Cinergy Corp. has voluntarily maintained the major tern nesting area at the facility in a favorable condition for terns and protected the area during the nesting season. The major nesting area is the 3.4 km long center dike that bisects Gibson Lake, the cooling lake for the generating station. As the colony expanded, nesting also occurred in active ash disposal areas and access roads to those areas, raising concerns that conditions could arise when incidental take of terns at the plant would be unavoidable. As a result, Cinergy has developed an HCP and has applied for an incidental take permit for least terns at their Gibson Generating Station.

Cinergy has applied for an incidental take permit for a 5-year period, with take not to exceed 5% of the estimated maximum adult population of least terns at the Gibson Generating Station in a given year. As part of the HCP supporting the permit application, Cinergy has committed to continued conservation of terns. They will maintain the dike as suitable nesting habitat, take steps to enhance nesting success including restricting access to the dike during the nesting season, and continue to cooperate in the monitoring of the colony. No incidental take is anticipated for nests associated with the center dike. Operation and maintenance needs may result in incidental take of terns at nests associated with active ash disposal areas and access roads to those areas, but Cinergy will continue to avoid take when possible. Between 1986-1998, 62 nests were located in ash disposal areas and access roads and no take of terns occurred. In addition to maintaining nesting habitat at the facility, Cinergy will also assist in the development of least tern nesting units at the adjacent Cane Ridge Wildlife Area.

### II. Does the HCP fit the low-effect criteria in the HCP Handbook?

**A. Are the effects of the HCP minor or negligible on federally listed, proposed, or candidate species and their habitats covered under the HCP prior to implementation of the mitigation plan?**

Yes. The Gibson Lake tern colony represents a small proportion of the total population of the interior least tern. The recovery plan for the species appropriately focuses management of

riverine habitat along major river systems as the key to the recovery of the species; there are no recovery goals identified for the project site.

All tern nesting habitat at the Gibson Generating Station is “artificial.” That is, the habitat was created as the result of the construction and maintenance of the Gibson Generating Station and associated facilities. No tern habitat existed at this site prior to construction of the facility and the continued operation and maintenance of the station is essential to the long-term conservation of least terns at the site. Maintenance of the center dike, which provides the core of the nesting habitat for terns, is required to keep the site suitable for tern nesting.

The net result of activities proposed in the HCP will increase the amount of suitable habitat available for nesting least terns. Cinergy will continue to maintain the primary least tern nesting area at the Gibson Generating Station. In addition Cinergy will aid in the development of and provide water for the Least Tern Nesting Units on the Cane Ridge Wildlife Area, which will create additional potential nesting habitat for terns.

**B. Are the effects of the HCP minor or negligible on other environmental values or resources (e.g. air quality, geology and soils, water quality and quantity, socio-economic, cultural resources, recreation, visual resources, etc.) prior to implementation of the mitigation plan?**

Yes, the effects of the HCP on other environmental values or resources are negligible. The action proposed in the HCP involves the continued operation and maintenance of the Gibson Generating Station, which will not result in any additional impacts on environmental values or resources.

**C. Would the impacts of this HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects not result, over time, in cumulative effects to environmental values or resources which would be considered significant?**

Yes, there are no cumulative effects to environmental values or resources anticipated. The action proposed in the HCP involves the continued operation and maintenance of the Gibson Generating Station. No changes in impacts on environmental values or resources are expected as a result of activities proposed in the HCP. No additional projects are foreseeable.

**III. Do any of the exceptions to categorical exclusions apply to this HCP?**

**Would implementation of the HCP:**

**A. Have significant adverse effects on public health or safety?**

No. No adverse effects on public health or safety are anticipated. The action proposed in the HCP involves the continued operation and maintenance of the Gibson Generating Station, and does not represent a substantial change from current operation and maintenance activities.

**B. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, flood plains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks?**

No adverse impacts to historic or cultural resources are anticipated, because none exist within the project area. Access restrictions associated with the protection of least tern nesting areas may have minor impacts on recreational opportunities at the Gibson Generating Station. For example, there is no access for recreational birding permitted on the center dike during the nesting season. However, these restrictions are considered critical to the conservation of terns at the site and are already enforced; these restrictions would likely continue regardless of the status of the proposed HCP.

**C. Have highly controversial environmental effects?**

No. As previously noted, no additional environmental effects are anticipated as the result of proposed activities at the Gibson Generating Station.

**D. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?**

No. The action proposed in the HCP involves the continued operation and maintenance of the Gibson Generating Station. Operation and maintenance activities are predictable and are unlikely to result in unique or unknown environmental risks.

**E. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?**

No. The actions proposed in the HCP are predictable and are under the direct control of Cinergy. We do not anticipate that the proposed action would establish a precedent for future action with potentially significant environmental effects.

**F. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects?**

No. The issuance of the HCP is not directly related to other actions with significant cumulative effects.

**G. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places?**

No. No properties listed or eligible for listing on the National Register of Historic Places occur in the project area.

**H. Have adverse effects on listed or proposed species, or have adverse effects on designated Critical Habitat for these species?**

No. As previously explained, the activities proposed in the HCP will result in continued conservation of least terns at the Gibson Generating Station and will increase the amount of suitable habitat available for nesting least terns. Cinergy will continue to maintain the primary least tern nesting area at the Gibson Generating Station. In addition Cinergy will aid in the development and provide water for the Least Tern Nesting Units on the Cane Ridge Wildlife Area, which will create additional potential nesting habitat for terns.

No other listed or proposed species or designated Critical Habitat occurs on the project area.

**I. Have adverse effects on wetlands, flood plains or be considered a water development project thus requiring compliance with either Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act?**

Activities at the Gibson Generating Station proposed in the HCP will have no additional impacts on wetlands or flood plains. Wetlands will be restored in the development of the Cane Ridge Wildlife Area (which will be owned and managed by the Service), which is adjacent to the Gibson Generating Station.

**J. Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment?**

No. Cinergy is aware of the obligation to adhere to all pertinent Federal, State, local, and tribal laws. Specifically with reference to the take of least terns, Cinergy has coordinated with the Indiana Department of Natural Resources because the tern is also a State-listed species, and take is a violation of State law.

**IV. ENVIRONMENTAL ACTION STATEMENT**

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record. Based on the analysis above, the HCP developed by Cinergy Corp. for Gibson Lake qualifies as a "low-effect" HCP as defined in the U.S. Fish and Wildlife Service Habitat

Conservation Planning Handbook (November 1996). Therefore this action is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1 and no further NEPA documentation will be made.

Other supporting documents:

Cinergy's HCP for the Federally Endangered Least Tern (dated July 22, 1999 and received on August 5, 1999).

Signature Approval:

Michael S. Piteo  
Acting  
(1) Field Supervisor

8/16/99  
Date

Robert Kraka  
(2) ES Supervisor, Geo 1

12-17-99  
Date

John Winter  
(3) Geographic ARD

12/18/99  
Date

Lisa Mandell  
(4) REC/HCP Coordinator

12/13/99  
Date