



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

3817 Luker Road  
Cortland, NY 13045

October 26, 2015

Mr. P.J. Saliterman  
Development Director  
OwnEnergy  
45 Main Street, Suite 536  
Brooklyn, NY 11201

Dear Mr. Saliterman:

This letter is in response to OwnEnergy's September 10, 2015, request for technical assistance regarding the proposed Copenhagen Wind Project (Project) located in Lewis and Jefferson Counties, New York. We understand that the Project will involve the construction and operation of up to 40 General Electric 2.0-116 wind turbines, up to four permanent meteorological towers, a system of gravel access roads, buried 34.5-kilovolt electrical collector lines, an operation and maintenance building, collection and transforming station, and an 8 mile 115-kV transmission line.

The U.S. Fish and Wildlife Service (Service) has reviewed the information provided in the memorandum and offers the following comments pursuant to the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). This response does not preclude additional Service comments under other legislation. It appears that a federal agency, the U.S. Army Corps of Engineers (Corps), may be involved with the Project through authorizations under Section 404 of the Clean Water Act. As you are aware, federal agencies have responsibilities under Section 7 of the ESA to consult with the Service regarding projects that may affect federally-listed species or designated critical habitat, and confer with the Service regarding projects that are likely to jeopardize federally-proposed species and/or adversely modify proposed critical habitat. We advise providing the Corps with a copy of your avoidance strategy as part of the 404 permit application. Please be advised that no work should begin at the Project site until consultation is complete.

OwnEnergy's request includes a memorandum (enclosed) outlining measures OwnEnergy will implement to avoid impacts to listed species during the construction and operation of the Project. We understand that this avoidance strategy will be in place until a habitat conservation plan (HCP) is finalized and an ESA Section 10(a)(1)(B) incidental take permit is issued or until take

coverage is no longer necessary. The take<sup>1</sup> avoidance strategy addresses two species: the federally-listed endangered Indiana bat (*Myotis sodalis*) and the federally-listed threatened northern long-eared bat (*Myotis septentrionalis*).

Most documented Indiana bat and northern long-eared bat fatalities have occurred during late summer/fall months. Indiana bats may fly through the Project site during spring and fall migration, but summer bat surveys at the site did not capture any Indiana bats. We agree with OwnEnergy’s assessment that Indiana bats are not anticipated to occur in the Project site during fall swarming activities given the distance to the Glen Park hibernaculum and reduced number of hibernating Indiana bats at that site. We further agree with the conclusion that the period of greatest risk of fatalities for Indiana bats from the Project is during fall migration.

Two northern long-eared bats were captured at the Project site during summer bat surveys. Northern long-eared bats may also fly through the Project site during spring and fall migration. There are no northern long-eared bat hibernacula located within anticipated fall swarming distance of the Project. We agree with the conclusion that the period of greatest risk of fatalities for northern long-eared bats from the Project is during fall migration and, within the home range of the assumed maternity colony, during the summer.

In coordination with our office, OwnEnergy has developed a strategy to avoid risk of take of Indiana bats and northern long-eared bats. Table 1 of OwnEnergy’s memorandum summarizes the components of the strategy.

**Table 1. Summary of Avoidance Measures, by Season, for Indiana Bats and Northern Long-eared Bats at the Copenhagen Wind Farm.**

Season	Dates	Cut-In Wind Speed (Blades Feathered Below Cut-In)		Tree Removal
		16 turbines near NLEB <sup>1</sup> capture	Remaining turbines	
Spring Migration	4/1 – 5/15	5.0 m/s	3.0 m/s	No <sup>2</sup>
Summer Maternity (until Fall overlap)	5/16 – 7/31	6.9 m/s	3.0 m/s	No <sup>2</sup>
Summer Maternity and Fall Migration	8/1 – 9/30	6.9 m/s	6.9 m/s	No <sup>2</sup>
Fall Swarming and Late Fall	10/1 – 10/31	3.0 m/s (no feathering)	3.0 m/s (no feathering)	Yes
Winter Hibernation	11/1 – 3/31	3.0 m/s (no feathering)	3.0 m/s (no feathering)	Yes
Adaptive Management Triggers		NLEB carcass found in Spring, increase cut-in speed to 6.9 m/s	NLEB carcass found in any season, adopt cut-in speed for 16 turbines; confer with USFWS about limiting # of turbines affected	

<sup>1</sup> NLEB = northern long-eared bat

<sup>2</sup> Emergency tree removal and hazard tree removal will be conducted as needed following the avoidance protocol defined in the text.

<sup>1</sup> Take is defined in section 3 of the ESA as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

## Construction

All tree removal associated with construction of the Project will occur between October 1 and March 31 when no Indiana bats or northern long-eared bats are anticipated to be present in the Project area. Also, while northern long-eared bats are anticipated to occur in a portion of the Project during the summer maternity season, the limited amount and patchy nature of tree removal is such that we do not anticipate any harm to northern long-eared bats from any habitat removal.

## Operations

Turbines will be operated in a manner that is anticipated to avoid take of both Indiana bats and northern long-eared bats. The strategy is tailored to the best available information about anticipated Indiana bat and northern long-eared bat activity in the Project site. Bat fatalities at wind projects occur primarily due to turbine blade strikes at night when bats are active and bat activity is correlated with wind speeds. At higher wind speeds, there is less bat activity - especially for smaller-bodied bats like Indiana bats and northern long-eared bats. Therefore, preventing turbines from rotating above 1-2 revolutions per minute until wind speeds reach 6.9 meters per second (mps) (when no Indiana bat/northern long-eared bat activity is expected) is anticipated to greatly reduce fatality of most bat species and completely avoid take of Indiana bats and northern long-eared bats. As discussed above, the strategy targets the time of year and locations that bats are most vulnerable to determine which turbines should be operated at 6.9 mps and during what seasons of the year. All turbines will be operated at 6.9 mps during fall migration and the turbines within the assumed maternity colony will also be operated at 6.9 mps during the summer maternity season. There is some lower risk of spring migration fatalities (particularly within the northern long-eared bat maternity colony) and operating at 5.0 mps in that area is anticipated to further reduce (~60%) the potential for any take of northern long-eared bats to the point where it is not anticipated. The remainder of turbines will be operated at 3.0 mps during the spring migration period. We would like to clarify that these operations should occur between ½-hour prior to sunset to ½-hour after sunrise.

This office is not authorized to provide guidance regarding our Office of Law Enforcement (OLE) investigative priorities involving federally-listed species. However, we understand that OLE carries out its mission to protect federally-listed species through investigation and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken reasonable and effective steps to avoid take of listed species.

The OLE will make decisions whether to refer for prosecution any alleged take of species. Adherence to Service recommendations on take avoidance measures and related communication will generally be taken into account when exercising discretion with respect to such potential referral. Each developer or operator will be responsible for maintaining internal records sufficient to demonstrate adherence to such recommendations.

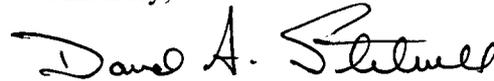
Based on implementing commitments in OwnEnergy's avoidance memorandum, the New York Field Office anticipates that the Project is unlikely to incidentally take federally-listed species during construction and operation activities as currently proposed, and we agree with the

proposed monitoring strategy. If project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of federally-listed and proposed endangered and threatened species in New York is available for your information. Until the proposed project is complete, we recommend that you check our website every 90 days from the date of this letter to ensure that listed species presence/absence information for the proposed project is current.\*

Any additional information regarding the Project and its potential to impact listed species should be coordinated with both this office and with the New York State Department of Environmental Conservation Region 6 Office.

Thank you for your time and effort to conserve federally-listed species. If you require additional information please contact Robyn Niver at 607-753-9334.

Sincerely,

A handwritten signature in black ink that reads "David A. Stilwell". The signature is written in a cursive style with a large, stylized "S" at the end.

David A. Stilwell  
Field Supervisor

\*Additional information referred to above may be found on our website at:  
<http://www.fws.gov/northeast/nyfo/es/section7.htm>

Enclosure

cc: NYSDEC, Watertown, NY (J. Farquhar)  
NYSDEC, Albany, NY (Wildlife: B. Gary, C. Herzog)  
Corps, Auburn, NY (M. Crawford)  
FWS, Hadley, NY (L. Whitney)  
FWS, Albany, NY (J. Bak)