

*CONFIDENTIAL
DRAFT*

*ATTORNEY-CLIENT PRIVILEGE
INTERNAL USE ONLY*



Energy and Wildlife Action Coalition
c/o Nossaman LLP
1666 K Street, NW
Suite 500
Washington, DC 20006
www.energyandwildlife.com

October 15, 2018

Comments regarding Draft Environmental Impact Statement and Draft Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit for Midwestern Bat and Bird Species; MidAmerican Energy Company, Iowa

Submitted by:

Energy and Wildlife Action Coalition

Filed electronically to the attention of:

Public Comments Processing
Attn: Docket No. FWS-R3-ES-2018-0037
U.S. Fish and Wildlife Service
MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803

The Energy and Wildlife Action Coalition (“EWAC”) submits these comments in connection with the U.S. Fish and Wildlife Service’s (“USFWS”) August 31, 2018 *Federal Register* notice (“Notice”) of availability for comment entitled “Draft Environmental Impact Statement and Draft Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit for Midwestern Bat and Bird Species; MidAmerican Energy Company, Iowa.” EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner.

EWAC appreciates the time and effort expended by MidAmerican Energy Company (“Applicant”) and the USFWS in developing a programmatic habitat conservation plan (“HCP”) that will serve to provide conservation to the covered species and take authorization under the Endangered Species Act (“ESA”) and Bald and Golden Eagle Act (“BGEPA”) for the Applicant’s operating wind energy assets throughout Iowa. The proposed conservation approach contemplated under the draft HCP is forward thinking and will likely lead to improved efficiency of the permitting process for the Applicant while still meeting the legal criteria and conservation purposes of ESA and BGEPA. EWAC submits these comments to offer its support of the proposed action, and specifically for the Applicant’s Preferred Alternative in the Draft Environmental Impact Statement (“DEIS”). EWAC encourages the USFWS to continue using inventive and programmatic solutions such as those used in the draft HCP in its ESA and BGEPA permit programs.

EWAC believes the proposed action will provide a threefold benefit of: 1) providing high conservation value to the covered species by evaluating and addressing potential impacts holistically, rather than on a project-by-project basis; 2) reducing the administrative burden on the USFWS staff in needing to evaluate, process, and administer twenty-two distinct ESA applications (and potentially as many permits under BGEPA if the applicant chose to pursue them for each facility) for each of its operating wind facilities throughout Iowa; and 3) increasing predictability for the Applicant, while reducing the time and cost that would be associated with preparing and pursuing numerous applications for each asset individually. EWAC commends the creative approaches to estimating take, monitoring, and providing mitigation, and believes innovation is key to a fully functional permitting program. We applaud the outside-the-box thinking on the part of the Applicant and USFWS in their consideration of a different approach to addressing these permitting elements.

As noted above, EWAC believes the proposed approach outlined in the Applicant’s HCP, and the issuance of one permit covering multiple wind energy facilities in a similar geographic setting would provide greater efficiency to both the Applicant and USFWS and improved conservation benefits to the covered species. However, while we appreciate the creativity and flexibility in considering alternate approaches under ESA and BGEPA as part of this HCP, it is important to note that these programs remain voluntary and applicant-driven, and while some project proponents might choose, like the Applicant, to cover both ESA-listed species and eagles under one permit, or include multiple facilities in one HCP, the decision to do so remains at the discretion of the applicant and should remain that way.

With respect to how the HCP addresses bald eagles, EWAC commends the USFWS’s consideration of a programmatic state-wide approach covering twenty-two different wind projects and authorizing a state-wide, rather than project-specific, take predication. EWAC is encouraged by the recognition and analysis of the differences in risk between resident breeding eagles and wintering and migratory eagles. EWAC believes this approach is scientifically sound, more efficient, and should be considered as a model for a general permit program for eagles.

Given the scale and approach of the HCP (i.e. covering the Applicant’s windfarms throughout Iowa and including a number of ESA-listed species as well as eagles), EWAC believes the proposal is

fairly unique and potentially precedent-setting, both for the wind industry and electric power sector more broadly. EWAC appreciates the opportunity to comment on this proposal, and looks forward to continuing to work with the USFWS and other stakeholders in the hopes of finding ways to further improve upon the ESA section 10 and BGEPA permitting processes.

Please feel free to contact the following EWAC representatives with any questions on our comments:

Tim Rogers, EWAC Policy Chair, timothy.g.rogers@xcelenergy.com, 612-330-1955

John M. Anderson, EWAC Policy Director, janderson@nossaman.com, 202-887-1441

Alan M. Glen, Nossaman, LLP, Partner, aglen@nossaman.com, 512-813-7943