

1250 West Century Avenue  
Mailing Address:  
P.O. Box 5601  
Bismarck, ND 58506-5601  
(701) 530-1600

July 23, 2024

Debbie-Anne Reese, Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, D.C. 20426

Re: WBI Energy Transmission, Inc.  
Wahpeton Expansion Project  
Docket No. CP22-466-000  
Variance Request for Project Mitigation Measure Modifications

Dear Acting Secretary Reese:

On October 23, 2023, the Federal Energy Regulatory Commission (FERC or Commission) issued an Order Issuing Certificate (Order) in the above referenced docket authorizing WBI Energy Transmission, Inc. (WBI Energy) to construct, modify, operate, and maintain its Wahpeton Expansion Project (Project) in Cass and Richland Counties, North Dakota. On February 13, 2024, the Commission authorized WBI Energy to proceed with construction of all Project facilities.

Pursuant to Environmental Condition No. 5 of the Order, WBI Energy is hereby submitting a variance request to modify the mitigation measures included in WBI Energy's application and the final environmental impact statement that would minimize impacts to identified nesting migratory birds prior to clearing the construction right-of-way. WBI Energy committed to conducting ground-based surveys for bird nests within 7 days prior to ground disturbance, and repeat the surveys as needed in the event of delays in the initiation of Project work. If nests were identified during surveys, a 0.1-mile buffer would be set up around the nest and construction would not be permitted to proceed in the area until the nest becomes inactive or the chicks have fledged.<sup>1</sup>

Twelve active nests were identified during 7/11/2024 – 7/12/2024 migratory bird nesting surveys from approximately Station Nos. 1799+00 to 1892+00. All nests identified during surveys were elevated in trees and shrubs and not associated with ground nesting species. None of the nests are associated with birds of conservation concern in the Project area. Following further consultation with the U.S. Fish and Wildlife Service (USFWS), WBI Energy is proposing to fence off the trees/shrubs containing the twelve active nests<sup>2</sup> and monitor the nests while Project construction

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<sup>1</sup> Final Environmental Impact Statement (see eLibrary accession number 20230407-3001, Section 4.4.3.2 Migratory Birds, page 4-42).

<sup>2</sup> To clarify, there are only twelve active nests identified versus the thirteen referenced in the correspondence with the USFWS.

activities continue. The USFWS has agreed to WBI Energy's proposed approach to fence the individual trees/shrubs containing nests and monitor the sites while construction continues through these areas, with no specific avoidance buffers required. However, WBI Energy further commits to widening the buffer around a nest if the birds are showing signs of distress during monitoring activities. Fencing off trees and shrubs and monitoring construction equipment in the area will prevent nests from being impacted by construction activities and will allow for ongoing breeding behaviors. WBI Energy will continue to conduct nesting surveys as needed until the end of the nesting season (August 1) and will continue to monitor the fenced active nests until they become inactive. Implementation of these modified mitigation measures will provide equal or better protection to these migratory birds.

The correspondence with the USFWS is provided as Attachment A and a KMZ file containing the location of the active nests is provided as Attachment B to this filing.

As required under Environmental Condition No. 5 of the Order, WBI Energy respectfully requests written authorization from the Director of the Office of Energy Projects to utilize the requested Project modification, by Thursday, July 25, 2024.

Pursuant to 18 CFR § 385.2010 of the Commission's regulations, copies of this filing are being served to each person whose name appears on the official service list for this proceeding.

Any questions regarding this filing should be addressed to the undersigned at (701) 530-1563.

Sincerely,

/s/ Lori Myerchin

Lori Myerchin  
Vice President, Regulatory Affairs  
and Transportation Services

Attachment

cc: via email

David Hanobic, FERC Environmental Project Manager  
Dawn Ramsey, FERC Deputy Environmental Project Manager  
Official Service List

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 23rd day of July, 2024.

By /s/ Lori Myerchin

Lori Myerchin

Vice President, Regulatory Affairs and  
Transportation Services

WBI Energy Transmission, Inc.

1250 West Century Avenue


Bismarck, ND 58503

Telephone: (701) 530-1563

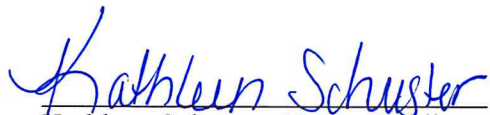
STATE OF NORTH DAKOTA     )  
COUNTY OF BURLEIGH        )

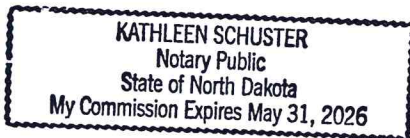
I, Lori Myerchin, being first duly sworn, do hereby depose and say that I am the Vice President, Regulatory Affairs and Transportation Services for WBI Energy Transmission, Inc.; that I have read the foregoing document; that I know the contents thereof; that I am authorized to execute such document; and that all such statements and matters set forth therein are true and correct to the best of my knowledge, information and belief.

Dated this 23<sup>rd</sup> day of July, 2024.

By   
Lori Myerchin  
Vice President, Regulatory Affairs and  
Transportation Services

Subscribed and sworn to before me this 23<sup>rd</sup> day of July, 2024.

  
Kathleen Schuster, Notary Public  
Burleigh County, North Dakota  
My Commission Expires: 5/31/2026



# Attachment A

## USFWS Correspondence

## Reukauf, Robbyn

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**From:** Toso, Luke B <luke\_toso@fws.gov>  
**Sent:** Tuesday, July 16, 2024 10:15 AM  
**To:** Reukauf, Robbyn  
**Cc:** Linn, Jill; Kelly, Steve; Chris Schmidt; Pabst, Justin; Pruitt, Duane; mvilla@aspenefs.com; rpatras@aspenefs.com; cputnam@aspenefs.com; Zoe Bryant; David Peters  
**Subject:** Re: [EXTERNAL] WBI Energy's Wahpeton Expansion Project: Migratory Bird Nesting Surveys

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Hi Robbyn -

Thanks for the opportunity to review. Our office agrees with your approach on fencing trees/shrubs with nests and monitoring while construction continues through these areas. Please let me know if you need any further documentation from our office.

Luke

Luke Toso  
Deputy Field Supervisor  
North Dakota Ecological Services  
U.S. Fish and Wildlife Service  
Cell: 720-793-6797

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**From:** Reukauf, Robbyn <Robbyn.Reukauf@WBIEnergy.com>  
**Sent:** Monday, July 15, 2024 4:20 PM  
**To:** Toso, Luke B <luke\_toso@fws.gov>  
**Cc:** Linn, Jill <Jill.Linn@wbienenergy.com>; Kelly, Steve <Steve.Kelly@WBIEnergy.com>; Chris Schmidt <chris.schmidt@erm.com>; Pabst, Justin <Justin.Pabst@WBIEnergy.com>; Pruitt, Duane <Duane.Pruitt@wbienenergy.com>; mvilla@aspenefs.com <mvilla@aspenefs.com>; rpatras@aspenefs.com <rpatras@aspenefs.com>; cputnam@aspenefs.com <cputnam@aspenefs.com>; Zoe Bryant <zoe.bryant@erm.com>; David Peters <david.peters@erm.com>  
**Subject:** [EXTERNAL] WBI Energy's Wahpeton Expansion Project: Migratory Bird Nesting Surveys

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Hi Luke,

WBI Energy is currently undergoing construction on our Wahpeton Expansion Project. We committed to conducting migratory bird nesting surveys within seven days of construction through designated migratory bird potential habitat along our right-of-way. ERM completed nesting surveys on a long stretch of potential habitat July 11-12, and discovered a total of 13 active nests. These include 6 mourning dove nests, 1 robin nest, 1 cedar waxwing nest, 2 brown thrasher

nests, 2 gray catbird nests, and 1 eastern kingbird nest. These nests are primarily located in shrubs/trees within or adjacent to our pipeline right-of-way. We have three Environmental Inspectors on the Project that have backgrounds in biology in nesting surveys. To maintain access to these areas, WBI Energy is requesting your feedback on whether trees/shrubs containing nests could be fenced off and monitored while construction continues in these areas. Please let us know your thoughts on if it would be acceptable to fence off and monitor these nests or if a wider avoidance buffer should be applied.

I have attached a Google Earth KMZ depicting each nest. This KMZ also includes photos and detailed descriptions of each nest location.

Thank you very much for your time.

Sincerely,  
Robbyn Reukauf

WBI Energy Transmission, Inc.  
2010 Montana Ave.  
Glendive, MT 59330

Office: (406) 359-7295  
Cell: (406) 853-4810  
Email: [Robbyn.Reukauf@WBIEnergy.com](mailto:Robbyn.Reukauf@WBIEnergy.com)

# Attachment B

## KMZ Map

The KMZ file is filed as a separate Public file