

ESI Energy LLC, Wholly Owned Subsidiary of Nextera Energy Resources LLC, is Sentenced After Pleading Guilty to Killing and Wounding Eagles in Its Wind Energy Operations, in Violation of the Migratory Bird Treaty Act

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ESI Energy Inc. (ESI) was sentenced today in Cheyenne, Wyoming, for violations of the Migratory Bird Treaty Act (MBTA), announced Assistant Attorney General Todd Kim for the Justice Department's Environment and Natural Resources Division and U.S. Attorney L. Robert Murray for the District of Wyoming.

ESI is a wholly owned subsidiary of NextEra Energy Resources LLC, which in turn is a wholly owned subsidiary of NextEra Energy Inc. ESI owns other companies, many of which operate wind energy generation facilities throughout the United States, including in Wyoming, New Mexico, Arizona, California, Colorado, Illinois, North Dakota and Michigan, as well as other states.

ESI pled guilty to three counts of violating the MBTA, each based on the documented deaths of golden eagles due to blunt force trauma from being struck by a wind turbine blade at a particular facility in Wyoming or New Mexico, where ESI had not applied for the necessary permits. ESI further acknowledged that at least 150 bald and golden eagles have died in total since 2012, across 50 of its 154 wind energy facilities. 136 of those deaths have been affirmatively determined to be attributable to the eagle being struck by a wind turbine blade.

The court sentenced ESI, pursuant to a plea agreement, to a fine of \$1,861,600, restitution in the amount of \$6,210,991, and a five-year period of probation during which it must follow an Eagle Management Plan (EMP). The EMP requires implementation of up to \$27 million (during the period of probation; more thereafter if a written extension is signed) of measures intended to minimize additional eagle deaths and injuries, and payment of compensatory mitigation for

future eagle deaths and injuries of \$29,623 per bald or golden eagle. ESI also must over the next 36 months apply for permits for any unavoidable take of eagles at each of 50 of its facilities where take is documented or, in the case of four facilities not yet operational, predicted.

“The Justice Department will enforce the nation’s wildlife laws to promote Congress’s purposes, including ensuring sustainable populations of bald and golden eagles, and to promote fair competition for companies that comply,” said Assistant Attorney General Todd Kim of the Justice Department’s Environment and Natural Resources Division. “For more than a decade, ESI has violated those laws, taking eagles without obtaining or even seeking the necessary permit. We are pleased to see ESI now commit to seeking such permits and ultimately ceasing such violations.”

“Wyoming is graced with abundant natural resources – including both eagles and strong winds,” said U.S. Attorney L. Robert Murray for the District of Wyoming. “The sentencing today shows our commitment to both maintaining and making sustainable use of our resources. It also ensures a level playing field for business in Wyoming and ensures those receiving federal tax credits are complying with federal law.”

“The U.S. Fish and Wildlife Service (USFWS) has a long

history of working closely with the wind power industry to identify best practices in avoiding and minimizing the impacts of land-based wind energy facilities on wildlife, including eagles," said Edward Grace, Assistant Director of the USFWS' Office of Law Enforcement. "This agreement holds ESI and its affiliates accountable for years of unwillingness to work cooperatively with the Service and their blatant disregard of wildlife laws, and finally marks a path forward for the benefit of eagles and other wildlife resources entrusted to the Service's stewardship."

"This prosecution and the restitution it secures will protect the ecologically vital and majestic natural resources of our bald eagle and golden eagle populations," said U.S. Attorney Phillip A. Talbert for the Eastern District of California.

"California has been awarded more than \$4.6 million in restitution under this plea agreement for the deaths of at least 92 eagles within the state caused by the defendant and affiliated companies."

The MBTA prohibits the "taking" of migratory birds, including bald and golden eagles, without a permit from the U.S. Fish and Wildlife Service of the Department of the Interior. "Take" is defined by regulation to mean "to pursue, hunt, shoot, wound, kill, trap, capture or collect" or to attempt to do so.

Bald and golden eagles are also protected under the Bald

and Golden Eagle Protection Act (the Eagle Act) which, like the MBTA, prohibits killing and wounding eagles without a permit from USFWS. USFWS is authorized to issue such eagle take permits (ETPs) only where: (1) the predicted take is compatible with the preservation of bald and golden eagles; (2) it is necessary to protect an interest in a particular locality; (3) the take is associated with, but not the purpose of, the activity; and (4) the take could not practicably be avoided. Permit applicants are required to avoid and minimize take to the maximum extent practicable, and to pay compensatory mitigation for unavoidable takes.

According to documents filed in court, it is the government's position that ESI's conduct violated both the Eagle Act and the MBTA, but the government accepted the company's guilty plea to only MBTA counts due in large part to ESI's agreement to apply for permits at 50 facilities and its prior efforts to minimize and mitigate for eagle fatalities.

ESI's and its affiliated companies' actions in Wyoming and New Mexico were taken under an admitted nationwide posture and alleged corporate policy of not applying for ETPs.

According to the information filed in this case:

- ESI and its affiliates deliberately elected not to apply for or obtain any ETP intended to ensure the preservation

of bald and golden eagles, and instead chose to construct and operate facilities it knew would take eagles, and in fact took eagles, without any permits authorizing that take.

- Because ESI did not seek any ETPs, it avoided any immediate federal obligation to avoid and minimize eagle take to the maximum degree practicable and to pay for compensatory mitigation for the eagle deaths.
- Because some other wind energy companies (1) altered proposed operations as required to avoid and minimize take levels to the maximum degree practicable, (2) applied for ETPs, (3) obtained ETPs that in some cases were impacted by take levels caused by ESI's unpermitted facilities, and/or (4) paid mitigation for eagle takings, ESI, by not doing these things, gained a competitive advantage relative to those wind energy companies.
- ESI and its affiliates began commercial operations at new facilities on a schedule intended to meet, among other things, power purchase agreement commitments and qualifying deadlines for particular tax credit rates for renewable energy, and with production amounts not impacted by avoidance and minimization measures that might have been required under an eagle take permit. ESI and its affiliates received hundreds of millions of dollars in federal tax credits for generating electricity from wind power at facilities that it operated, knowing

that multiple eagles would be killed and wounded without legal authorization, and without, in most instances, paying restitution or compensatory mitigation.

According to documents filed in court, between 2018 and 2019, ESI authorized subsidiary Cedar Springs Transmission LLC (CST) to develop a multi-facility commercial wind power project in Converse County, Wyoming, consisting of the Cedar Springs I, II and III wind power facilities (collectively, the project).

On March 28, 2019, USFWS informed the defendant, through a letter to its agents, that Cedar Springs I and II, based on CST's consultant's calculations, could result in the collision mortality of 44 golden eagles and 23 bald eagles over the first five years of operations, and recommended that, because of the unusually high number of occupied golden eagle nests, the proposed wind facilities not be built. USFWS further stated that, if the facilities were built, the company should apply for an ETP under the Eagle Act as soon as possible. The defendant continued the development of the Cedar Springs facilities.

On July 17, 2019, representatives of CST met with USFWS representatives. During that meeting, USFWS recommended that, consistent with the recommendation made by USFWS in February, the wind project not be

constructed due to the risk of avian fatalities. USFWS also recommended that, if the wind project was built, the project should implement seasonal curtailment during daylight hours. The defendant did not implement the recommended curtailment.

Between Sept. 10 and Sept. 23, 2019, USFWS sent additional letters to the defendant's agents, each noting that the defendant's parent company had documented that the project was anticipated to kill eagles and recommending that the facilities apply for an ETP. USFWS reiterated for the third time its recommendation that a wind project should not be constructed in the proposed area for the Cedar Springs project.

On or about Sept 28, 2020, the defendant's affiliates began some turbine operations at Cedar Springs II. Between approximately Nov 29, 2020, and Dec 1, 2020, two golden eagle carcasses were found near wind turbines at Cedar Springs II (after which it was sold).

On or about Dec. 6, 2020, the defendant authorized the commercial operation of Cedar Springs I to commence. Between April 2021 and January 2022, seven golden eagle carcasses were found near wind turbines at Cedar Springs I.

On or about Dec. 15, 2020, the defendant authorized the commercial operation of Cedar Springs III to commence. On

approximately Jan. 30, 2022, a golden eagle carcass was found near a wind turbine at Cedar Springs III.

Between 2018 and 2019, ESI authorized a subsidiary, Roundhouse Renewable Energy LLC (RRE), to develop a commercial wind power facility in Laramie County, Wyoming.

In a letter dated March 28, 2019, USFWS stated that, based on RRE's consultant's calculations, Roundhouse could result in the collision mortality of 19 golden eagles and 4 bald eagles over the first five years of operation, and recommended that RRE apply for an ETP under the Eagle Act. The defendant continued the development of Roundhouse.

In a letter dated Aug. 27, 2019, USFWS provided recommendations on opportunities to avoid and minimize impacts to eagles using the available data. USFWS again stated that the facility was predicted to take eagles even if all USFWS recommendations were implemented, however, and recommended that an ETP be sought.

On June 12, 2020, the defendant authorized the commercial operation of Roundhouse to commence. Between approximately Sept. 17, 2020, and April 17, 2021, four golden eagle carcasses were found near wind turbines at Roundhouse.

In 2003, ESI authorized a subsidiary, FPL Energy New Mexico Wind LLC (NMW), to begin operations at a commercial wind power facility in De Baca and Quay Counties, New Mexico. On or about Dec. 29, 2020, two golden eagle carcasses were found near a wind turbine at NMW.

No ETP was sought by or issued to ESI in connection with the operations or repowering of any of the above wind power facilities.

This case was investigated by the U.S. Fish and Wildlife Service Office of Law Enforcement. The prosecutions were handled by the Environmental Crimes Section of the Justice Department's Environment and Natural Resources Division with assistance from the U.S. Attorneys' Offices for the Eastern District of California, the District of Wyoming and the Northern District of California.