



October 7, 2020

VIA ELECTRONIC MAIL

Commissioner Katie Dykes
Connecticut Dept. of Energy and Env'tl. Protection
79 Elm Street
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**RE: Sierra Club Supplemental Comments Regarding Eversource Application for
Section 401 Water Quality Certification for Pomfret to Killingly Pipeline
Project**

Commissioner Dykes:

The Sierra Club respectfully submits the following supplement to its comments dated June 9, 2020 and June 30, 2020 concerning the Eversource Application for Section 401 Water Quality Certification for the Pomfret to Killingly Pipeline Project.

In its prior comments, Sierra Club identified adverse impacts to several state-listed endangered species that would be caused by the proposed project, including adverse impacts to the Northern long-eared owl.¹ Sierra Club provided photographic documentation from May 2020 of the Northern long-eared owl in the pipeline project area, along with information from a Connecticut Audubon employee who personally observed this owl species in the project area over the course of several months in spring 2020.² Sierra Club was dismayed to see a response from DEEP to Analiese Paik, dated August 4, 2020, concerning the Northern long-eared owl and asserting that no such owls had been documented in the project area, when Sierra Club had submitted such documentation to DEEP in its comments. In response, attached please find a declaration signed by Andy Rzeznikiewicz, Land Manager for the Connecticut Audubon Society, providing detailed information regarding his observation of Northern long-eared owls in the project area from March to May 2020.³

¹ Sierra Club Comments on Eversource Application for Section 401 Water Quality Certification for Pomfret to Killingly Pipeline Project (June 9, 2020), at 12-13; Sierra Club Supplemental Comments Regarding Eversource Application for Section 401 Water Quality Certification for Pomfret to Killingly Pipeline Project (June 30, 2020) at 2-3.

² *Id.*

³ See Declaration of Andy Rzeznikiewicz, September 29, 2020.

Mr. Rzeznikiewicz declares that he—and at least 30 other birders in total over this time period—observed Northern long-eared owls flying out of the Wyndham Land Trust Duck Marsh Preserve.⁴ Mr. Rzeznikiewicz states that every evening he and usually five other birders observed up to seven Long-eared owls,⁵ and provides photographic documentation of the Long-eared owls in the project area, collected by his colleague Aaron Bourque.⁶

As Sierra Club highlighted in its prior comments and associated expert report prepared by Downstream Strategies, noise and construction traffic from the proposed project could reduce the foraging efficiency of owls in the area, which depend almost entirely on sound to hunt for prey.⁷ Such disturbance could drive the owls from the habitat entirely, effectively resulting in habitat loss.⁸ Sierra Club noted that the damage to the wetland ecosystems crossed by the pipeline, and the species those ecosystems support—including the Northern long-eared owl—would be a loss of a designated use inconsistent with the Connecticut Water Quality Standards.⁹

Further, Sierra Club noted that under General Statutes of Connecticut Section 26-310(c), an administrative agency must request an exemption from the commissioner of DEEP if a project authorized by that agency will “threaten the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species.”¹⁰ Given that in order for a species to be considered endangered under Connecticut law there must be “no more than five occurrences in the state,”¹¹ with “occurrence” defined as “a population of a species breeding and existing within the same ecological community,”¹² Sierra Club anticipates that the habitat in project area is likely essential to the survival of the Northern long-eared owl in Connecticut. Thus, DEEP staff would be required to obtain from you, Commissioner, an exemption under Section 26-310(c) for threatening the Northern long-eared owl before granting certification to the proposed pipeline under Section 401 of the Clean Water Act.

Sierra Club also notes that Eversource’s current NDDB Determination is dated July 31, 2019 and was valid for one year. Because construction on the project did not begin before July 31, 2020, a NDDB Determination renewal will be necessary. Given that Northern long-eared owls were documented in the project area consistently over several months this year, and as

⁴ Rzeznikiewicz Declaration, at 1.

⁵ *Id.*

⁶ See Rzeznikiewicz Declaration, at 2-3. Sierra Club anticipates a second declaration will be completed by Mr. Bourque, describing his observation of the owls from March to May 2020 and providing additional photographic documentation.

⁷ Downstream Strategies, Potential Impacts from Eversource’s Proposed Pomfret to Killingly Pipeline Project (June 3, 2020), at 20.

⁸ *Id.*

⁹ See generally Sierra Club comments dated June 9, 2020. See also Regulations of Connecticut State Agencies, §§ 22a-426-1 to 22a-426-9.

¹⁰ Conn. Gen. Stat. § 26-310 (c).

¹¹ Conn. Gen. Stat. § 26-304 (7).

¹² Conn. Gen. Stat. § 26-304 (15).

recently as May 2020,¹³ Sierra Club urges that this state-listed endangered species be included in any updated NDDB Determination.

Respectfully submitted,

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Attachment: Declaration of Andy Rzeznikiewicz

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¹³ Rzeznikiewicz Declaration, at 1.

DECLARATION OF ANDY RZEZNIKIEWICZ

1. My name is Andy Rzeznikiewicz. The facts set forth in this declaration are based on my personal knowledge and my review of publicly available information.
2. I am an employee of the Connecticut Audubon Society. I have been employed by Connecticut Audubon since 1994. In my role as Land Manager of the Pomfret and Trail Wood Preserves, I manage the 700-acre Bafflin Sanctuary in Pomfret and the 168-acre Trail Wood Sanctuary in Hampton, focusing on early succession, field management, trail work, and invasive plant management. I also lead bird walks, private bird surveys and birding tours, bird banding studies, saw-whet owl banding, and environmental education programs.
3. From the first week of March 2020 until the first week of May 2020, every evening I and usually five, and sometimes as many as eight or nine bird watchers, would observe up to seven Northern long-eared owls flying out of the Wyndham Land Trust Duck Marsh Preserve to go hunting for the night. It is probable that the owls were present here all winter, however I was not looking for them at that time. Beginning when we first spotted the owls in March until we stopped them in May, bird watchers came from all over the state to observe these state-listed endangered¹ birds. At least 30 people observed the owls in total.
4. Each night we observed the Northern long-eared owls on the north-central part of the preserve, flying out of the alder thicket with tall Black cherry trees with thick vines growing on them. This is assumed to be their daytime roost location, but we never went

¹ CT DEEP, Long-eared Owl, <https://portal.ct.gov/DEEP/Wildlife/Fact-Sheets/Long-eared-Owl>.

in to confirm for fear of disturbing the owls. We observed the owls hunting over the hayfields adjacent to the thicket.

5. We observed at least two Short-eared owls roosting and hunting in this area as well. They flew out of the same spot as the Northern long-eared owls and engaged in many of the same behaviors as the Northern long-eared owls. We stopped seeing both species of owls in the first week of May 2020.
6. The proposed pipeline runs directly across the area where we observed the owls. We observed the owls hunting over the hayfield that the proposed pipeline would cross. The alder thicket in which the owls were likely roosting borders that hayfield. At one point we observed a Northern long-eared owl landing on one of the posts that marks where the existing pipeline runs and where the proposed pipeline would be constructed.
7. At least five or six people documented the sightings of the Northern long-eared owls via photo. The below photos were taken by Aaron Bourque while we observed the Northern long-eared owls; the first photo was taken on April 25, 2020 and the second was taken on May 3, 2020.





8. I and others input these Northern long-eared owl sightings onto eBird, an online platform where birders can contribute bird sighting information including location and photographic documentation.² According to eBird, the site is “among the world’s largest biodiversity-related science projects, with more than 100 million bird sightings contributed each year by eBirders around the world.”³ Sightings of between one and four Northern long-eared owls were entered on eBird for three nights between March 27 and April 16, 2020.⁴
9. The Northern long-eared owls were easily identified when they would perch on trees, shrubs, or bird houses. The initial identification was made when Aaron Bourque posted a photo to eBird believing it was a Short-eared owl and an eBirder commented that it was

² See Ebird.org, Wyndham Land Trust--Duck Marsh Preserve, <https://ebird.org/hotspot/L6812273> (listing bird sightings reported at the Wyndham Land Trust Duck Marsh Preserve).

³ Ebird.org, About eBird, <https://ebird.org/about>.

⁴ See Ebird.org, Wyndham Land Trust--Duck Marsh Preserve.

in fact a Northern long-eared owl. Numerous experienced bird watchers subsequently identified the Northern long-eared owls, including Phil Rusch.

10. I previously observed Northern long-eared owls nearby beginning in approximately 2003 or 2004 until 2010, at an Audubon sanctuary less than a mile away from the preserve. A reliable roost of approximately 25 Northern long-eared owls was located there, but the evergreen trees the owls roosted in died of disease and the population disappeared with the habitat. Also, from approximately 2003 or 2004 to 2010, there was another nearby Audubon location with a small roost of Northern long-eared owls, but the conifers the owls used as habitat declined and I stopped seeing the owls there as well.
11. I declare under the law of Connecticut that the foregoing is true and correct.

Date:

9/29/2020


Andy Rzeznikiewicz