



**National Rural Electric  
Cooperative Association**

A Touchstone Energy® Cooperative 

August 29, 2014

Public Comments Processing  
ATTN: FWS-R5-ES-2011-0024  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 Fairfax Drive, MS 2042-PDM  
Arlington, VA 22203

Submitted Electronically via eRulemaking Portal to FWS-R5-ES-2011-0024

SUBJECT: Comments on Listing the Northern Long-Eared Bat as an Endangered Species; Proposed Rule, 78 *Fed. Reg.* 36698 (June 30, 2014), Docket No. FWS-R5-ES-2011-0024

The National Rural Electric Cooperative Association (NRECA) respectfully submits the following comments in response to the above-referenced notice and request for comment from the U.S. Fish and Wildlife Service (FWS). We appreciate the opportunity to submit comments on the proposed rule to list the Northern Long-Eared Bat (NLEB) as an endangered species under the Endangered Species Act of 1973, as amended (ESA).

NRECA is the national service organization dedicated to representing the national interests of cooperative electric utilities and the consumers they serve. NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to over 42 million people in 47 states or 12 percent of electric customers. The vast majority of NRECA members are not-for profit, consumer-owned cooperatives. NRECA's members also include approximately 65 generation and transmission cooperatives, which generate and transmit power to 668 of the 838 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. The typical distribution co-op is a small business that serves 13,000 consumers. Electric cooperatives own and maintain 2.5 million miles or 42 percent of the nation's electric distribution lines, covering 75 percent of the U.S. landmass. Both distribution and G&T cooperatives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost.

NRECA understands the FWS's concerns for the NLEB presented by the disease white-nose syndrome as outlined in the proposed listing. While we agree that there are compelling reasons for listing the NLEB as threatened or endangered, NRECA has concerns regarding the guidelines for compliance with the "Northern Long-eared Bat Interim Conference and Planning Guidance," and with the proposed listing of the species as endangered. Our concern centers on the electric cooperatives obligations to public safety, maintaining electric reliability, and legal requirements under the Energy Policy Act of 2005 and the North American Electric Reliability Corporation Transmission Vegetation Management standards (FAC-003-3)<sup>1</sup>.

<sup>1</sup> <http://www.nerc.com/files/FAC-003-3.pdf>

NLEB habitat, including suitable roost trees, may occur in or near electric utility rights-of-way posing a risk to power lines. Electric cooperatives identify and remove these *danger trees*—any trees that are growing into a power line or at risk of falling into a power line—every year, often on an emergency basis. Co-ops remove danger trees throughout the summer months when access is possible and the heaviest demands on the electrical system occur, unfortunately at the same time as NLEB potentially occupy them. Many of the trees are dead or dying, and must be quickly removed to maintain safe and reliable electrical power. When conditions are dry, trees near power lines also can cause serious fires.

If the FWS lists the NLEB as endangered, NRECA has concerns that the ESA section 9 prohibition of the unauthorized “take” of listed species will be at odds with electric cooperatives’ public and legal obligations to remove danger trees in order to maintain the safety and reliability of power lines, both transmission and distribution. Illegal take can give rise to criminal enforcement, civil administrative penalties and civil judicial action for injunctive relief.

A final listing of the NLEB appears to immediately trigger this double jeopardy issue with one regulatory agency requiring a utility to trim or remove vegetation (NERC) and another regulatory agency preventing a utility from doing so (FWS). NRECA believes this listing will affect potentially 650 distribution co-ops and G&Ts within the NLEB’s 39-state range. The importance and extent of this problem requires a national solution for electric cooperatives.

Because of what we see as a potential conflict between two legal requirements—the requirement to maintain reliable power by removing certain trees or other vegetation that threaten transmission and distribution lines and the requirement to protect listed species and their habitat—NRECA recommends that FWS work with electric cooperatives to identify a means by which cooperatives will be able to meet both of these legal obligations simultaneously. NRECA is committed to working with the FWS and other immediate stakeholders to develop such a result.

If you have questions regarding our comments or we can otherwise be of additional assistance, please contact me at (703) 907-5790 or [carol.whitman@nreca.coop](mailto:carol.whitman@nreca.coop).

Sincerely,

A handwritten signature in black ink that reads "Carol E. Whitman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Carol E. Whitman, Ph.D.  
Senior Legislative Principal  
Environmental Issues

cc:  
Mr. Gary Frazer, FWS  
Mr. Dennis Rankin, USDA