

FWS faltered on bat protections — court -- Friday, August 5, 2016 -- www.eenews.net

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Government regulators failed to properly consider ways to minimize killing or harming endangered bats before issuing permits to an Ohio wind project, federal judges ruled today.

The U.S. Court of Appeals for the District of Columbia Circuit issued an opinion siding in part with the nonprofit group Union Neighbors United, which challenged the Fish and Wildlife Service over its permit authorizing the wind project to incidentally kill endangered Indiana bats.

The judges found that FWS had failed to comply with its obligations under the National Environmental Policy Act "when it failed to consider an economically feasible alternative that would take fewer bats than Buckeye [Wind LLC's] proposal," said the ruling written by Judge Robert Wilkins, an Obama appointee.



FWS granted Buckeye's application to build 100 turbines in Ohio, but Union Neighbors United argued that the agency failed to appropriately consider alternative ways to minimize adverse impacts to bats.

Specifically, the group wanted FWS to consider using higher cut-in speeds, the wind speed "at which rotors begin rotating and producing power." FWS said it wasn't necessary to consider that proposed speed.

But the appeals court today disagreed, finding that FWS had violated its NEPA obligations, and as a result, the issuance of the incidental take permit was "arbitrary and capricious." The appeals court reversed a lower court's ruling on that issue.

Also in today's opinion, the court concluded that FWS is entitled to deference over its interpretation of the Endangered Species Act. "In light of its interpretation, the Service complied with its ESA obligations," Wilkins wrote.

"[A]t this time we express no opinion whether, after analyzing another reasonable alternative under NEPA on remand, the Service has obligations under the ESA to make additional independent findings as to whether any such alternative is impracticable," the opinion says.

Wilkins was joined in the opinion by two other Obama appointees, Judges Patricia Millett and Sri Srinivasan.

The court heard oral arguments in the case, *Union Neighbors United Inc. v. Sally Jewell*, in March ([Greenwire](#), March 8).

[Click here](#) to read the opinion.