

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

FILED

DEC 29 2015

U.S. DISTRICT COURT-WVND
WHEELING, WV 26003

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:15 CR 23

16 U.S.C. §§ 703, 707(a)

AES LAUREL MOUNTAIN, LLC

I N F O R M A T I O N

The United States Attorney Charges:

1. Defendant, AES LAUREL MOUNTAIN, LLC, is a corporation organized under the laws of the State of Delaware and a subsidiary of The AES Corporation. At all times material hereto, defendant AES LAUREL MOUNTAIN, LLC, directly employed personnel and conducted business operations in the Northern District of West Virginia.

2. The Migratory Bird Treaty Act, Title 16, United States Code, Sections 701-712 (hereinafter referred to as the "MBTA"), was enacted by Congress protect migratory birds, as well as their parts, nests, and eggs. The MBTA prohibits the "taking" of migratory birds by any means and in any manner unless except as permitted by regulation. 16 U.S.C. § 703

3. Defendant AES LAUREL MOUNTAIN, LLC, is in the business of producing, storing, and selling energy generated through wind power. In the fall of 2011, the defendant owned, maintained, and operated a wind power facility in an undeveloped, wooded, and mountainous area of Barbour County, West Virginia. The site featured numerous wind power turbines spaced along a ridge, as well as an energy storage complex called the Battery Energy Storage System (hereinafter, "BESS") and a substation. The BESS served to store energy produced by the wind turbines.

4. The BESS complex included (24) twenty-four rectangular structures which served as battery containers. Surrounding the BESS complex were (5) five metal utility poles mounted with (8) eight 250 watt steady-burning, high-pressure sodium lamps. Essentially two-headed spotlights, the lamps emitted a white light from dusk until dawn so as to illuminate the entire BESS facility.

5. On October 2nd and October 3rd, 2011, the geographic area encompassing the AES LAUREL MOUNTAIN, LLC site experienced weather conditions featuring fog and a low cloud ceiling. Songbirds migrating through the area became “trapped” in the light of the BESS complex. While flying through and around the complex, the birds collided with battery containers and wires. A total of approximately 483 migratory birds died as a result of blunt force impact with an object, lacerations, or exhaustion. The majority of the dead birds were found on top of, around, and in close proximity to the structures of the BESS on the mornings of October 3rd (314 birds) and 4th (81 birds).

6. The 483 birds in question belonged to listed species of migratory birds. 50 C.F.R. 10.13. Of the 483 birds, 308 were Blackpoll Warblers. As of October 2, 2011, the defendant AES LAUREL MOUNTAIN, LLC, was not authorized to take any such birds pursuant to MBTA regulations. 50 C.F.R. 21.

7. Defendant AES LAUREL MOUNTAIN, LLC, had a legal obligation to comply with the MBTA in the course of its activities related to wind power generation and storage. In furtherance of said obligation, defendant AES LAUREL MOUNTAIN, LLC, had a duty to implement reasonable, prudent, and effective measures to avoid or minimize the impact of lighting on migratory birds. AES LAUREL MOUNTAIN, LLC, also had a duty to train and supervise its employees working at its site concerning compliance with the MBTA.

8. Prior to October 2, 2011, defendant AES LAUREL MOUNTAIN, LLC, failed to provide instruction and training to its employees about compliance with the MBTA. More specifically, despite an awareness of the risk that lighting poses to migrating birds – particularly, in remote, elevated areas - the defendant corporation failed to provide any instruction or training to site managers, team leaders, physical plant engineers, and maintenance technicians about the nature of that risk and how to minimize it.

9. In the absence of instruction, training, or direction to the contrary, employees in charge of operating and maintaining the BESS complex kept the aforementioned lights on all night every night, automatically lit and extinguished by dusk-to-dawn photo cells, as a security measure. This course of action proximately caused the death of 483 migratory birds over a period during the nights of October 2nd and 3rd, 2011.

COUNT ONE

Unlawful Take of Migratory Birds
16 U.S.C. §§ 703, 707(a)

1. Paragraphs 1-13 are incorporated by reference.
2. On or about October 2, 2011, in Barbour County, West Virginia, within the Northern District of West Virginia, defendant AES LAUREL MOUNTAIN, LLC., did unlawfully take approximately 314 migratory birds, including Blackpoll Warblers (*Setophaga Striata*) and other listed species, at the Battery Energy Storage System (BESS) complex of its wind power facility without authorization by the U.S Fish and Wildlife Service, in violation of Title 16, United States Code, Sections 703 and 707(a).

COUNT TWO

Unlawful Take of Migratory Birds

16 U.S.C. §§ 703, 707(a)

1. Paragraphs 1-13 are incorporated by reference.
2. In or about October 3, 2011, in Barbour County, West Virginia, within the Northern District of West Virginia, defendant AES LAUREL MOUNTAIN, LLC., did unlawfully take approximately 81 migratory birds, including Blackpoll Warblers (*Setophaga Striata*) and other listed species, at the Battery Energy Storage System (BESS) complex of its wind power facility without authorization by the U.S Fish and Wildlife Service, in violation of Title 16, United States Code, Sections 703 and 707(a).



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