



Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271
www.dnr.illinois.gov

Bruce Rauner, Governor
Wayne A. Rosenthal, Director

Authorization for Incidental Take and Implementing Agreement

Pursuant to the Illinois Endangered Species Protection Act (Act) (520 ILCS 10/5.5) and the regulations adopted to implement the Act (17 Ill. Adm. Code 1080), authorization is hereby granted to Commonwealth Edison (hereinafter referred to as ComEd) for the incidental take of the State-threatened Ornate Box Turtle (*Terrepenne ornata*), Plains Hog-Nosed Snake (*Heterodon nasicus*), and Regal Fritillary (*Speyeria idalia*). The Illinois Department of Natural Resources (hereinafter referred to as Department) has determined that this taking is incidental to activities occurring **within two environmentally-sensitive areas** associated with an 11.2-mile transmission line rebuild in Whiteside County, Illinois. A portion of the project area for which take authorization is sought lies within the Hahnman Sand Prairie Illinois Natural Areas Inventory Site (INAI #1845). The site is included on the Natural Areas Inventory due to the presence of a high quality natural community, specific suitable habitat occupied by endangered and/or threatened species, and the designation of an Illinois Nature Preserves Commission-protected site. Take authorization **excludes** Hahnman Sand Prairie Nature Preserve.

Procedural History

A Conservation Plan prepared by Stantec on behalf of ComEd, was submitted to the Department on April 23, 2018, as a request for authorization for the incidental take of Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary. The Department requested additional information on May 17, 2018, to make the conservation plan complete as prescribed by Ill. Adm. Code 1080.10. Additional information was received by the Department on June 13, 2018. The final conservation plan was accepted as complete by the Department on June 14, 2018. The public notice period and public comments will be detailed under #6 of the Compliance section below.

Compliance with the Illinois Endangered Species Protection Act

The Act includes six criteria which must be satisfied for the authorization of incidental take of an endangered or threatened species. These criteria and the Department's determination for each are listed below.

1. The taking will not be the purpose of, but will be only incidental to, the carrying out of an otherwise lawful activity:

The stated and apparent purpose of this proposed action is to rebuild an existing 138-kilovolt, 11.2-mile transmission line in Whiteside County. **Take authorization specifically applies to two environmentally sensitive sand prairie locations where easements have been executed as follows:**

- Area 1 encompasses the right-of-way from Hahnaman Road south to the north boundary of the Hahnaman Sand Prairie Nature Preserve within the 100-foot-wide easement area from Structures 191A to 197, the 150-foot-wide easement area from Structures 190 to 191A, and a 15-foot-wide temporary off right-of-way access road between Structures 190 and 191; AND
- Area 2 encompasses the right-of-way from Structure 230 to half way between Structures 234 and 235 (approximately 850 feet south of Star Road to 2,950 feet south of Star Road) within the 100-foot-wide easement area.

In total, the existing 104 wooden H-frame structures within the entire 11.2-mile footprint will be removed and replaced with 111 self-supporting steel monopole structures approximately 100-125 feet tall. No new structures will be installed in the Hahnaman Sand Prairie Nature Preserve. The conductors of the existing single circuit line and H-frame structures will be completely removed and recycled, and the former H-frame structure holes will be backfilled. New monopole steel structures will then be installed. They require concrete caisson foundations and excavated holes 5-8 feet in diameter and 20-35 feet in depth. New conductors will replace the existing circuit and additional conductors will be added to create a double circuit on the steel monopoles. The new steel structures arrive in two or three pieces and are assembled at the structure location. The conductor installation will occur from the ground with pull pads on the right-of-way, using cranes and bucket trucks. Construction matting will be temporarily installed to provide access to wetlands and other unstable soil. Mat roads will be approximately 14-foot-wide and mat work platforms (if necessary) may be as large as 100-foot-wide by 100-foot-long. Construction matting will consist of clean timber, composite, or hybrid timber mats. Matting will be installed with rubber-tired mat trucks, forwarders, forklifts, or skid loaders. Site restoration and revegetation will occur based on the degree of disturbance caused by construction activities. The right-of-way will be maintained free of tall growing vegetation throughout the operational life of the line. Further project detail is provided in the conservation plan. All proposed activities may result in direct burial or crushing of, dispersal of, and/or noise and vibration disturbance to the Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary.

Total estimated environmentally-sensitive area of impact within species habitat for the proposed actions is **5.595 acres. The Area 1 action includes the removal of 12 poles replaced by 9 new structures; the Area 2 action includes the removal of 10 poles replaced by 5 new structures.** The Department concurs that the take of Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary that could result from the proposed project is not the purpose of ComEd's activities, but is incidental to the carrying out of an otherwise lawful activity.

2. The parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking:

Proposed avoidance, minimization and mitigation were included in ComEd's conservation plan.

To meet the "maximum extent practicable" standard, additional minimization and/or mitigation measures may be required beyond those proposed by ComEd, based on the life history needs of the Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary. **All required minimization and mitigation measures are presented under the Authorization section below.**

3. The parties to the conservation plan will ensure that adequate funding for the conservation plan will be provided.

ComEd states that they are responsible for the implementation of the new transmission line and the conservation measures outlined in the conservation plan. Funding for the project, monitoring, and mitigation has been dedicated as part of ComEd's budget.

The Department accepts this provision as assurance that adequate funding will be available to carry out the terms of the conservation plan.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of survival or recovery of the endangered species or threatened species in the wild within the State of Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois.

Ornate Box Turtle (*Terrapene ornata*)

Ornate Box Turtle is an Illinois State-threatened turtle species.

Habitat: The Ornate Box Turtle inhabits prairie grassland, pastures, fields, sandhills, and open woodland areas. The species is terrestrial but occasionally enters slow, shallow streams. For shelter, the Ornate Box Turtle burrows into soil or uses burrows made by other species. They hibernate through winter in burrows 0.5-1.8 meters in depth.

Distribution: Their overall range covers most of the central United States. The Ornate Box Turtle can be found from southeastern Wyoming to Wisconsin and Indiana, and south to Arizona and Louisiana.

Reproduction: Mating occurs in the spring or late summer. Nesting occurs between May and August. Females lay 1-2 clutches of 1-8 eggs each year. Eggs hatch in 9-12 weeks. Males are sexually mature in 8-9 years, females in 10-11 years.

Population: The Ornate Box Turtle is at risk from increased urbanization and increased agriculture.

Range in Illinois: Ornate Box Turtles have been observed in the last ten (10) years in 28 of 102 Illinois counties. There are currently 53 extant Element

Occurrence Records for Ornate Box Turtles in the Illinois Natural Heritage Database.

Incidental Take Authorizations: The Department has six (6) previously issued or pending Incidental Take Authorizations for the Ornate Box Turtle. This is the first authorization to be granted in Whiteside County. Three (3) of the previously issued or pending Incidental Take Authorizations are further south in Madison and Morgan Counties. These were for a water line extension, carbon sequestering, and commercial development projects. The project is within ten (10) miles of two (2) Incidental Take Authorizations for Ornate Box Turtle and passes through one. These projects are wind farms in Bureau, Whiteside, and Lee Counties, which are yet to be built.

Plains Hog-Nosed Snake (*Heterodon nasicus*)

Plains Hog-Nosed Snake is an Illinois State-threatened snake species.

Habitat: The Plains Hog-Nosed Snake inhabits prairies, sandhills, and semi-agricultural areas with sandy or gravelly soils. They are active from April to October and overwinter in burrows.

Distribution: Their overall range covers most of the central United States. They can be found as far north as Canada, extending south to northern Texas.

Reproduction: Mating occurs in the spring and eggs are laid in July. Females lay clutches of 3-23 eggs each year or every other year. Plains Hog-Nosed Snake is sexually mature in their second year of life.

Population: The Plains Hog-Nosed Snake is at risk from habitat loss or degradation. Conversion of prairie habitat to agriculture has been a main cause of decline.

Range in Illinois: The species is found in northwestern Illinois and in some eastern counties. Plains Hog-Nosed Snakes have been observed in the last ten (10) years in eight (8) of 102 Illinois counties including Carroll, Cass, Iroquois, JoDaviess, Lee, Mason, Morgan, and Whiteside. There are currently ten (10) extant Element Occurrence Records for Plains Hog-Nosed Snakes in the Illinois Natural Heritage Database.

Incidental Take Authorizations: The Department has five (5) previously issued or pending Incidental Take Authorizations for Plains Hog-Nosed Snakes. This is the first authorization to be granted in Whiteside County. Three (3) of the previously issued or pending Incidental Take Authorizations are further south in Cass, Morgan, and Mason Counties. These were for a landfill recap, road improvement, and carbon sequestering projects. The other two (2) are for wind farms within ten (10) miles of this project in Bureau, Whiteside, and Lee Counties, which are yet to be built.

Regal Fritillary (*Speyeria idalia*)

Regal Fritillary is an Illinois State-threatened butterfly species.

Habitat: Regal Fritillary butterflies inhabit open grassy areas. They can also occur in savannas if trees are sufficiently sparse or clumped. Populations require large numbers of violet plants (*Viola* species), as these are the sole larval foodplants.

Distribution: They are found in north central United States from the Canadian border (49 degrees North) into Oklahoma (36 degrees North). Historically they were found in the eastern states and New England. They are now extirpated in these areas and the only known populations are in Pennsylvania and Virginia.

Reproduction: Females lay up to 1000 eggs at once. They are placed near violets and hatch after 3-4 weeks. The larvae quickly seek a hibernation site and become active again in the spring. The pupal stage lasts about 3 weeks. Both sexes can mate shortly after emerging. Adult males live about a month, adult females live about two months.

Population: Regal Fritillary butterflies have lost approximately 40% of their historic range. Loss and fragmentation of habitat to agriculture, pesticides, overuse of prescribed burning, development, and reforestation are among the known threats to the Regal Fritillary.

Range in Illinois: The species is found at scattered locations throughout the northern and central part of the state. Regal Fritillary has been observed in the last ten (10) years in 15 of 102 Illinois counties. There are currently 16 extant Element Occurrence Records for Regal Fritillary in the Illinois Natural Heritage Database.

Incidental Take Authorizations: The Department has eight (8) previously issued or pending Incidental Take Authorizations for Regal Fritillary. This is the first authorization to be granted in Whiteside County. Six (6) of the projects are located further south in Cass, Mason, Morgan, and Scott Counties. These projects included landfill recapping, carbon sequestering, pipeline construction, road improvement, electric transmission line construction, and coal ash pond closure. The other two (2) are for wind farms within ten (10) miles of this project in Bureau, Whiteside, and Lee Counties, which are yet to be built.

Based on the amount of habitat impacted by this project, the number of known occurrences of Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary in Illinois, an assessment of the potential effect of this project on individual species in the project footprint, the conservation methods included in this authorization for take and the conservation plan, and the understanding that vulnerability and recovery information on the species remains limited; it is the conclusion of the Department that the taking anticipated as a result of this project will not reduce the likelihood of survival or recovery of the species in the wild within the State of Illinois, the biotic community of which the species are a part, or the habitat essential to the species' existence in Illinois.

5. Any measures required under Section 5.5(b)(6) of the Act will be performed.

Additional measures are listed below under “Authorization”. This authorization is, by definition, subject to those terms and conditions and the signature of a representative from ComEd indicates their commitment to performing those measures.

6. The public has received notice of the application and has had the opportunity to comment before the Department made any decision regarding the application.

Public notice of ComEd’s request for authorization of incidental take was published in the *Breeze Courier* (official state newspaper) on June 19, 2018, and in the *Daily Gazette* on June 19, 26, and July 5, 2018. A copy of the conservation plan was deposited at the Sterling Public Library, where it was available for public review. The deadline for public comment was August 4, 2018. No comments were received from the public.

Authorization

It is the determination of the Department that the measures to be implemented by ComEd will adequately minimize and mitigate the anticipated taking of Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary occurring **within two environmentally-sensitive areas** of an 11.2-mile transmission line rebuild in Whiteside County, Illinois. Further the Department has concluded that the taking authorized herein will not reduce the likelihood of survival or recovery of Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary in the wild within the State of Illinois, the biotic community of which the species are a part, or the habitat essential to the species’ existence in Illinois.

All terms and conditions included in the aforementioned Conservation Plan submitted by ComEd to the Department are incorporated into this agreement by reference and are made a part thereof.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5] and the Administrative Rules for the Incidental Taking of Endangered and Threatened Species [Ill. Adm. Code 1080.40(b)], this authorization is issued subject to the following terms and conditions, which may include additions or modifications to the minimization and mitigation measures proposed by ComEd in the conservation plan:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of **five (5) years** from the date of the Department signature, unless terminated by written agreement of both parties. The term of the permit may be reviewed and extended by the Department in accordance with Authorization condition #2 below upon written request by ComEd no less than three months prior to expiration.

This authorization may be revoked pursuant to the Act and Ill. Adm. Code 1080.80(b) if the Department finds that ComEd has failed to comply with any of

these terms and conditions or has been responsible for the taking of Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary beyond that which is incidental to work **within two environmentally-sensitive areas** of the 11.2-mile transmission line rebuild in Whiteside County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between ComEd and the Department. The Illinois Endangered Species Protection Board shall be notified of such alteration.

Any substantive changes, including but not limited to a change in the project footprint or a change in the State-listed species which could potentially be affected, will require that a new conservation plan be submitted to the Department to initiate the review and public notice process as required by the Act.

3. This authorization may only be transferred upon approval and written authorization by the Department.
4. Notification to all on-site personnel shall be provided on the sensitive biological resources in the area; the identification of Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary; regulations protecting the species; where the species might be found; avoidance areas; travel restrictions for equipment; how to report sightings or incidents that may involve take; the importance of avoiding take of the species; and response protocol if the species are found. **ComEd shall submit a copy of the education materials to the Department.**
5. The Department reserves the right of entry by its staff or representatives to inspect potential habitat and species management practices.
6. Biological consultants employed by ComEd shall hold the necessary permits for work with non-listed and listed species; these include an Illinois Department of Natural Resources (IDNR) Scientific Collection Permit as authorized under 17 Illinois Administrative Code 520, and an IDNR Endangered Species Permit as authorized under 17 Illinois Administrative Code 1070.
7. ComEd shall **notify the Department's Endangered Species Program by email correspondence of construction commencement and completion** of the project. A **project status report** shall be submitted to the Department within **90 days** following completion summarizing the implementation of minimization and mitigation measures and evaluating the effectiveness or status of those measures and shall include a project photo log. The report shall also include a map and GPS coordinates of any listed species found within and/or translocated from the project footprint, description of any injuries or mortalities (including census data from truck/equipment grilles – see 9.b. below), and the disposition of any individuals that were injured or killed.

8. Any discoveries of additional State-listed species beyond those identified in this agreement **halts work** and shall be reported to the Department within 48 hours accompanied by location information (photograph, map, and GPS coordinates).
9. ComEd shall conduct, or cause to be conducted, the following pre-construction or construction efforts **within the two environmentally-sensitive areas**:
 - a. During the active period for the reptile species; new, clean exclusionary fencing shall be installed and buried along the right-of-way and enclose the construction work areas. Visual encounter searches shall occur during installation and the species shall be removed to outside of the exclusion and construction area. Species data shall be collected on each individual translocated including length, approximate age, sex (if discernable), and photograph. Ornate box turtles and plains hog-nosed snakes shall be marked to facilitate recapture identification during post-construction surveys.
 - b. A Biological Monitor shall conduct visual encounter searches during placement of construction matting, during ground disturbance activities, during excavation of pole foundations, and during passage of vehicles and equipment. Truck/equipment grilles shall be inspected daily for the presence of Regal Fritillary butterflies during the adult flight period (June through September).
 - c. New, clean construction matting shall be installed along the existing right-of-way to minimize soil compaction.
 - d. If work is required in a non-matted area, the Biological Monitor shall conduct a visual encounter search of the area prior to accessing.
 - e. All exclusionary fencing and construction matting shall be removed upon construction completion and prior to the beginning of the Ornate Box Turtle's and Plains Hog-Nosed Snake's next active period (March 15 through October 15).
 - f. Any revegetation of the right-of-way within the Hahnman Sand Prairie INAI shall utilize native seed determined through coordination with and permission from the landowner.
 - g. Signs alerting right-of-way maintenance staff to the presence of sensitive natural communities and species shall be placed at each end and along the right-of-way within the Hahnman Sand Prairie INAI. Invasive species control within the right-of-way of this sensitive area shall follow the Invasive Species Management Guidelines provided on the Illinois Nature Preserves Commission's website under Stewardship.
10. ComEd shall conduct, or cause to be conducted, a thorough botanical survey within the project area **prior to** construction commencement:
 - a. **A report including, but not limited to, the survey methodology utilized, vegetation structure with estimated abundance, species list (highlighting *Viola* species), and a map of survey coverage areas shall be provided to the Department within 90 days of execution of this agreement.**

11. ComEd shall conduct, or cause to be conducted, a thorough survey for Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary **within the two environmentally-sensitive areas** during appropriate species active periods in Years 1 and 2 **following** construction completion:
 - a. **A report including, but not limited to, the survey methodology utilized, habitat structure (noting vegetation restoration successes or struggles), the species and numbers of individuals located (noting any discovery of translocated individuals), length, approximate age, sex (if discernable), and a map of the species locations and survey coverage areas shall be provided to the Department within 90 days of completion of each survey.**
12. Mitigation to the maximum extent practicable is required by the Act. Mitigation requirements for this authorization are as follows:
 - a. ComEd shall provide funding in the amount **\$47,500** to the Illinois Wildlife Preservation Fund to be earmarked to bring conservation benefit to Ornate Box Turtle, Plains Hog-Nosed Snake, and Regal Fritillary.
 - b. The donation shall be provided **within 90 days of execution of this agreement**. Mitigation payments are nonrefundable, including events of revocation or termination.

Mitigation values are based on the Department's best current understanding of the species life history needs, real estate values, and impact analysis relevant to the project site's proposed conceptual design elements available at the time of review.

13. All reports, notifications, and other project documentation shall be submitted to:

Illinois Department of Natural Resources
Office of Resource Conservation
Endangered Species Program – Incidental Take Authorization Coordinator
One Natural Resource Way
Springfield, IL 62702-1271

(217)557-8243
DNR.ITAcordinator@illinois.gov

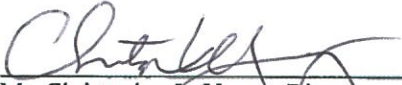
The Department's Endangered Species Program shall provide all reports required under this agreement to the Illinois Endangered Species Protection Board and to the Department's Natural Heritage Database.

14. The ComEd official identified below is authorized to execute this agreement. Execution by ComEd indicates acceptance of all terms and conditions described in this authorization.

15. The execution of this agreement does not waive or excuse the responsibilities of ComEd to comply with other Federal, State, or local regulations, including but not limited to obtaining any required permits for the execution of this project.

For the Illinois Department of Natural Resources:

For Commonwealth Edison Company:



Mr. Christopher L. Young, Director
Office of Resource Conservation



Mr. Paul Kiyachman
Senior Project Manager

9/11/18

Date

9/10/18

Date



Ms. Sharon Pluskis
Director of Environmental, Health, and Safety

9/10/18

Date