

Staff Briefing Papers

Meeting Date October 10, 2019 Agenda Item 1*

Company Three Waters Wind Farm, LLC

Docket No. **IP7002/CN-19-154**

**In the Matter of the Application for a Certificate of Need for the up to 201
Megawatt Three Waters Wind Farm in Jackson County**

Issues 1. Should the Commission find the application complete?
 2. Should the Commission direct the use of the information review process?
 3. Should the Commission take any other action?

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 **Relevant Documents**

Date

Certificate of Need Application

July 31, 2019

DOC DER Comments

August 13, 2019

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issues

1. Should the Commission find the application complete?
2. Should the Commission direct the use of the information review process?
3. Should the Commission take any other action?

II. Overview of Project, Filings, and Positions

Three Waters Wind Farm, LLC (Three Waters) is proposing to construct an up to 201-megawatt (MW) Large Wind Energy Conversion System (Project) in Jackson County. The Project would be situated within an approximately 48,087-acre area located southwest of the City of Lakefield in Jackson County, Minnesota. The Project's Minnesota site permit boundary spans land parcels in Ewington, Round Lake, Sioux Valley, Rost, Hunter, and Minneota Townships in Jackson County. The Iowa portion of the Project encompasses approximately 11,000 acres. Three Waters is seeking the certificate of need determination and site permit approval for the entire up to 201 MW Project in Minnesota, however, Three Waters notes that it may site a portion of the permitted turbines at alternate turbine locations within Osceola and Dickinson counties in Iowa.

In an Order dated March 26, 2019 and an erratum dated April 16, 2019, the Minnesota Public Utilities Commission (Commission) granted Three Waters exemptions from some of the information requirements under Minn. Rules Chapter 7849. The exemptions are the same or similar to those requested by (and granted to) independent power producers proposing wind generation projects.

On July 31, 2019, Three Waters filed an application for a certificate of need for the wind facility noting it has entered into a power purchase agreement with Minnesota Municipal Power Agency (MMPA) for the energy produced by the project.

Three Waters argued that the project is needed to comply with Minnesota's carbon reduction goals, meet MMPA's internal goal of generating 100 percent of its energy needs from renewables and allowing MMPA to use the project to help it meet any current or future Renewable Energy Standard ("RES") and other clean energy requirements in Minnesota. Three Waters is requesting that the Commission issue a certificate of need for the project on the basis of a need for economical and carbon-free renewable energy for MMPA's customers.¹ Three Waters is proposing that the project be permitted to allow for a 2021, fourth-quarter, in-service date.²

On August 13, 2019, the Department of Commerce, Division of Energy Resources (Department) filed comments on the completeness of the application requesting Three Waters file additional supplemental information regarding the consideration of alternatives for MMPA's system, and

¹ Three Waters CN Application, p. 6

² Three Waters CN Application, p. 2

upon its filing, the Commission should find the application complete.³ In reply comments, on August 27, 2019, Three Waters filed comments and provided supplemental information in response to issues raised by the Department.

Staff confirmed (via a phone call in September 2019) with the Department that the supplemental information contained in the reply comments was responsive to the Department's request and that the Department did not intend on filing additional comments.

III. Statutes and Rules

The proposed wind project is a large energy facility as defined by Minn. Stat. § 216B.2421, Subd. 2 (1) because it is equal to or greater than 50 MW. Therefore, Minn. Stat. § 216B.243, Subd. 2, requires that the project receive a certificate of need from the Commission before it can be constructed.

The operative rules for this Application or project are in Minn. Rules, Chapter 7849. The specific provision related to the item under discussion is Minn. Rule 7849.0200, Subp. 5 Complete Applications:

The Commission must notify the applicant within 30 days of the receipt of the application if the application is not substantially complete. On notification, the applicant may correct any deficiency and may resubmit the application. If the revised application is substantially complete, the date of its submission is considered the application date.

The content requirements for an electric generation facility can be found in Minn. Rules 7849.0240, 7849.0250 and 7849.0270 to 7849.0340.

IV. Staff Discussion

Completeness

Staff has reviewed the certificate of need application and supplemental information provided by Three Waters against the content requirements in Rule and as outlined by the Commission in its March 26 and April 16, 2019 Orders and agrees with the Department's recommendation that the application be accepted as complete. As always, if further information is necessary to process the certificate of need application, it will be requested by the Department or Commission staff.

Review Process

Staff recommends that the Commission direct the use of the informal review process for the Three Waters certificate of need application. The informal review process consists of comments

³ Department Comments, p. 4

and reply comments to develop a record, rather than the more formal contested case procedure, which requires the identification of witnesses, the development of testimony and the cross-examination of witnesses, etc. The comment and reply comment process has worked well for the majority of certificate of need applications for wind energy facilities to sufficiently develop a record on which the Commission can make a determination under the criteria in Statute (Minn. Stat. § 216B.243, Subd. 3, and under Minn. Rules, 7849.0120 (A-D)). At this time, staff does not foresee any reason why the comment process would not be appropriate for this project, however, if issues arise, the Commission can later refer the matter to the Office of Administrative Hearings.

With respect to public participation, the informal review process allows anyone to submit comments on the merits of a need application. In addition, the informal review process provides the same opportunities for members of the public to express their concerns with the project as a contested case, without requiring the more formal procedures of a contested case proceeding. Staff notes that an Environmental Report on the project will be produced and a public hearing, conducted by an Administrative Law Judge, will be held in the vicinity of the project. To facilitate the informal review process, the Commission should delegate scheduling authority to the Executive Secretary and adopt the following additional items:

- a. the name, telephone number, and e-mail address of the Commission employee designated to facilitate citizen participation in the process;
- b. request that the Department continue to study issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Three Waters;
- c. require that Three Waters facilitate in every reasonable way the continued examination of the issues by the Department;
- d. a request that Three Waters place an electronic or print copy of the application for review in a Government Center and/or Public Library in the vicinity of the project;
- e. a directive that Commission staff work with the Administrative Law Judge and the staff of the Department in selecting suitable time(s) and location(s) for a public hearing on the application; and
- f. a directive that Three Waters work with staff of the agencies to arrange for publication of the notice of the hearings in newspapers of general circulation at least ten (10) days prior to the hearings, that such notice be in the form of visible display ads, and proofs of publication of such ads be eFiled with the Commission.

Last, Three Waters has not requested a joint review process with the Large Wind Energy Conversion Site Permit that was filed on September 30, 2019, the request was not made in either filing (certificate of need or site permit application). The site permit application is being processed under Commission Docket 19-576 and has not yet been accepted as complete. Staff believes the timing of the applications are such that joint notices, meetings, and hearing would be advantageous to the public to ensure clarity and reduce confusion by reducing the number of meetings to the extent possible. Since the site permit application has not been accepted as

complete, staff does not propose the Commission decide on joint hearings at this time and instead can make that determination upon the completeness determination of the site permit (in the instance the application is insufficient or inadequate and requires supplement).

V. Decision Options

1. Accept the application as substantially complete as of August 27, 2019; direct the use of the informal review process; delegate scheduling authority to the Executive Secretary; and adopt the additional items a-f as identified by staff, above.
2. Take some other action.

Staff Recommendation: 1.