

# Minnesota Public Utilities Commission

## Staff Briefing Papers

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Meeting Date: January 23, 2014. . . . . Agenda Item # \*1

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Company: **Odell Wind Farm, LLC**

Docket No. **IP-6914/TL-13-591**

**In the Matter of the Odell Wind Farm, LLC's Route Permit Application for the Proposed 115 kV Transmission Line and Associated Facilities in Cottonwood, Jackson, and Martin Counties, Minnesota**

Issue(s): Should the Commission find the route permit application complete? Should the Commission refer the matter to the Office of Administrative Hearings for a contested case proceeding? Should the Commission appoint a public advisor? Should the Commission establish an advisory task force?

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### Relevant Documents

Application (4 parts) ..... December 12, 2013  
Department of Commerce EERA Compliance Review ..... January 2, 2014  
Applicant's Reply Comments ..... January 8, 2014

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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 otherwise noted.

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## **I. STATEMENT OF THE ISSUES**

Should the Commission accept the route permit application as complete?

Should the Commission refer the matter to the Office of Administrative Hearings?

Should the Commission vary Minn. Rule 7850.3700 to facilitate the Commission's input on whether additional routes should be considered?

Should the Commission appoint a Public Advisor? Should the Commission establish an advisory task force?

## **II. PROJECT OVERVIEW**

On December 12, 2013, Odell Wind Farm, LLC (Odell) submitted an application pursuant to Minnesota Statutes Chapter 216 E and Minnesota Rules Chapter 7850 for a route permit for construction and operation of a 9.5-mile 115 kV High Voltage Transmission Line (HVTL) and a substation in Martin, Jackson and Cottonwood Counties. The project is designed to interconnect the proposed the 200 megawatt (MW) Odell Wind Farm Large Wind Energy Conversation System (LWECS) site permit application (Docket IP6914/WS-13-843).

Odell has proposed to utilize a variable 150 to 600 foot route width for the 115 kV HVTL. The majority of the proposed route would be 150 feet wide extending from the road centerline. Odell Wind Farm, LLC is requesting that the proposed route width in sections 1 and 12 of Kimball Township in Jackson County be 300 feet, extending 150 feet on both sides of the road centerline. The proposed 300 foot route width in this area was requested to allow additional flexibility to accommodate distances from homes. Odell Wind Farm, LLC is requesting a 600 foot route width in section 6 and 7 of Cedar Township in Martin County. In this area, the additional route width will allow flexibility to work around a known easement title issue.

Construction of the project would commence in the third quarter of 2014 and is anticipated to take approximately two months. The in-service date of the project would be determined by the approval and construction of the Odell Wind Farm LWECS.

## **III. PROCEDURAL HISTORY**

On July 8, 2013, Odell filed a Notice of Intent to file a route permit application under the alternative permitting process (Minnesota Statutes, section 216E.04 and Minnesota Rules, parts 7850.2800 to 7850.3900) for the project.

A notice of comment period on the completeness of the route permit application was issued by the Commission on December 17, 2013, requesting initial comments by January 2, 2014, and reply comments by January 9, 2014.

On January 2, 2014, the Department of Commerce, Energy and Environmental Review Analysis staff (EERA) submitted comments on completeness of the application.

On January 8, 2014, the applicant filed reply comments in response to EERA's filing.

#### **IV. STATUTES AND RULES**

Under Minnesota Statutes, section 216E.04, subd. 2, “[n]o person may construct a high-voltage transmission line without a route permit from the commission.” Under Minnesota Statutes, section 216E.01, subd. 4, a high-voltage transmission line is defined as a “...conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts or more and is greater than 1,500 feet in length”. The project as proposed by Odell would include approximately 9.5 miles of new 115 kV circuit transmission lines and therefore, requires a route permit from the Commission.

##### **Application Review**

Odell filed its application for a route permit under the provisions of the alternative permitting process outlined in Minnesota Statutes, section 216E.04 and Minnesota Rules, parts 7850.2800 to 7850.3900. The proposed project is eligible for consideration under the alternative permitting process, because it is a proposed high-voltage transmission line between 100 and 200 kV.

Route permit applications for high-voltage transmission lines reviewed under the alternative permitting process must include specific information about the proposed project as outlined under Minnesota Rules, part 7850.1900, subp. 2. The Commission may accept an application as complete, accept it as complete upon the filing of additional information, or reject an application and advise the applicant of the deficiencies.

The permit review process begins on the date the Commission determines that an application is complete. Under the alternative permitting process, the Commission has six months to reach a final route permit decision. This time may be extended for up to three months for just cause or by agreement of the applicant.

##### **Public Advisor**

Under Minnesota Rules, part 7850.3400, upon acceptance of an application for a route permit, the Commission must designate a staff person to act as the public advisor on the project. The public advisor is available to answer questions from the public about the permitting process.

##### **Advisory Task Force**

Minnesota Rules, part 7850.3600, provides for the Commission to appoint an advisory task force, if appropriate. The Commission must determine whether to appoint a task force as early in the process as possible, but is not required to assign one. If the Commission appoints an advisory task force, it must specify the charge to the task force, and appoint its members in accordance with Minnesota Statutes, section 216E.08.

### **Environmental Assessment Preparation**

EERA is responsible for preparing an environmental assessment for high-voltage transmission line projects reviewed under the alternative permitting process in accordance with Minnesota Rules, part 7850.3700. The environmental assessment must provide information on the human and environmental impacts of the proposed project and of alternative sites or routes, including methods to mitigate such impacts.

### **Public Hearing**

Under Minnesota Rules, part 7850.3800, applications for high-voltage transmission line route permits require a public hearing upon completion of the environmental assessment. The rules provide for Commission appointment of a hearing examiner (Commission staff or other) to facilitate the comprehensive factual development and to ensure that the record created at the public hearing is preserved. The Commission may request the hearing examiner to provide a report and recommendations on the matter. The manner in which the public hearing must be conducted is outlined under Minnesota Rules, part 7850.3800, subp. 3, as follows:

Subp. 3. Hearing procedure. The hearing must be conducted in the following manner, although the hearing examiner may vary the order in which the hearing proceeds:

- A. the staff shall make a brief presentation to describe the project, explain the process to be followed, and introduce documents to be included in the record, including the application, the environmental assessment, and various procedural documents;
- B. the applicant shall introduce its evidence by way of testimony and exhibits;
- C. the public must be afforded an opportunity to make an oral presentation, present documentary evidence, and ask questions of the applicant and staff;
- D. the hearing examiner shall provide a period of not less than ten days for the submission of written comments into the record after the close of the hearing; and
- E. the hearing examiner shall transmit the complete record created at the hearing, including all written comments, to the commission within five days of the close of the record, unless the hearing examiner has been requested by the commission to prepare a report.

## **V. SUMMARY OF COMMENTS**

### **Comments of the Department of Commerce**

The Department of Commerce EERA staff conducted a completeness review of the route permit application and concluded that the application meets the content requirements of Minnesota Rules, part 7850.3100, and is substantially complete. EERA staff requested that Odell clarify the right-of-way width designation (ROW) in Section 3.2 where it is suggested that the HVTL requires a 113 to 140 ROW when a typical ROW for a 115 kV HVTL is 75 to 80 feet.

EERA staff also stated that no contested issues of fact have been identified with respect to the representations in the Route Permit Application.

EERA staff also analyzed the merits of establishing an advisory task force for the proposed project. Based on project size, project complexity, known or anticipated controversy, and known sensitive resources, EERA staff concluded that an advisory task force is not warranted.

EERA staff recommended that the Commission accept the route permit application for the Canisteo HVTL project as substantially complete. Additionally, EERA staff recommended that the Commission take no action on an advisory task force at this time. EERA staff made recommendation on the public hearing process that is most appropriate for the project.

### **Applicant's Reply Comments**

Odell filed reply comments on January 8, 2014 stating that they agreed with the recommendations set forth by EERA in their January 8, 2014 comments. Odell agreed to work with EERA to provide any additional information need to develop the environmental assessment for the project.

## **VI. STAFF DISCUSSION**

### **Application Completeness**

Commission staff has reviewed the route permit application and agrees with EERA staff that the application contains the information required by Minnesota Rules and should therefore be accepted as complete. Staff agrees with EERA's recommendation to require additional clarification related to the selection of the ROW for the project.

### **Advisory Task Force**

Staff agrees with the EERA's conclusion that an advisory task force is not required. Further, no person has requested that a task force be appointed for this project. Staff recommends the Commission take no action on an advisory task force at this time.

### **Public Advisor**

Staff recommends the Commission designate Commission staff person Tracy Smetana to act as the public advisor in this matter.

### **Administrative Responsibilities**

Staff recommends the Commission direct staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minnesota Statutes, section 216E.10, subd. 3, and to request that state agencies submit comments prior to the last day of the public hearing.

### **Referral to OAH**

Staff believes the issues raised by the application are best developed in proceedings conducted by an administrative law judge. Therefore, staff recommends the Commission refer the matter to the Office of Administrative Hearings (OAH) for summary proceedings under Minnesota Rules, part 7850.3800. The issue to be addressed is whether the proposed project meets the selection standards

and criteria established under Minnesota Statutes, section 216E.03, subd. 7, and Minnesota Rules, part 7850.4100. Further, staff recommends the Commission request the administrative law judge to adapt the existing procedural framework of Minnesota Rules, part 7850.3800, to include the following actions to facilitate comprehensive factual development of the record:

- a. Request that the administrative law judge assigned to the matter emphasize the statutory time frame for the Commission to make final decisions on applications and to strongly encourage the parties and participants to adhere to a schedule that conforms to the six-month statutory time frame.
- b. Request that the administrative law judge ask the parties, participants, and the public to address whether the proposed project and any alternatives to the proposed project meet the selection criteria established in Minnesota Statutes, section 216E.03, subd. 7, and Minnesota Rules, part 7850.4100.
- c. Request that the administrative law judge prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project, alternatives to the proposed project, and a preferred route alternative, applying the routing criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.

### **Scoping Decision and Alternative Routes**

Staff also recommends an additional process step concerning the alternatives to be considered in the environmental document and at the time of public hearing. Under Minnesota Rules, part 7850.3700, subp. 3, the scope of the environmental assessment must be determined by the commissioner of the Department of Commerce within ten days after close of the public comment period. However, Minnesota Statutes, section 216E.04, subd. 5, anticipates that the Commission will have the opportunity to identify other routes for consideration prior to environmental review of a project. Therefore, staff recommends the Commission vary the ten-day timeline to facilitate the Commission's input on whether additional routes should be considered. Further, staff recommends the Commission request Department of Commerce EERA to present draft route alternatives to the Commission prior to the Department's final scoping decision, to provide for Commission input prior to the final scoping decision.

### **Time Variance Request**

Under Minnesota Rule 7829.3200, subpart 1, the Commission is authorized to grant a variance to its rules upon determining the following conditions are met:

- 1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- 2) granting the variance would not adversely affect the public interest; and
- 3) granting the variance would not conflict with standards imposed by law.

Staff believes the three conditions are met under the circumstances outlined in this briefing paper as follows:

- 1) Enforcement of the rule would impose an excessive burden on the public and those reasonably likely to be affected by the proposed project by limiting the Commission's ability to identify alternative routes or other issues and ensure their consideration in the environmental assessment and at the time of the public hearing;
- 2) Granting the variance would not adversely affect the public interest and would in fact serve the public interest by providing for Commission input into the scope of the environmental assessment; and
- 3) Granting the variance will not conflict with standards imposed by law since the ten-day timeline is set by rule, not statute, and may therefore be waived.

## **VII. COMMISSION DECISION ALTERNATIVES**

### **A. Determination of Application Completeness**

1. Accept the application as complete.
2. Accept the application as complete upon filing missing information.
3. Reject the application and indicate the specific deficiencies.
4. Take some other action deemed appropriate.

### **B. Public Advisor**

1. Appoint a Commission staff person as public advisor.
2. Take some other action deemed appropriate.

### **C. Advisory Task Force**

1. Authorize Commission staff to establish a task force.
2. Take no action on an advisory task force at this time.
3. Take some other action deemed appropriate.

### **D. Scoping Decision and Alternative Routes**

1. Grant a variance to Minnesota Rules, part 7850.3700, subp. 3, to vary the ten-day timeline and request the Department of Commerce EERA present draft route alternatives to facilitate Commission input into the commissioner of the Department of Commerce's environmental assessment scoping decision.
2. Deny the request for a variance.
3. Take some other action deemed appropriate.

**E. Referral to OAH**

1. Refer the matter to the OAH for a summary proceeding requesting in the order that the OAH adapt the existing procedural framework set forth Minnesota Rules, part 7850.3800, to incorporate the following:
  - a. Request that the administrative law judge assigned to the matter emphasize the statutory time frame for the Commission to make final decisions on applications and to strongly encourage the parties and participants to adhere to a schedule that conforms to the statutory time frame.
  - b. Request that the administrative law judge ask the parties, participants, and the public to address whether the proposed project and any alternatives to the proposed project meet the selection criteria established in Minnesota Statutes, section 216E.03, subd. 7, and Minnesota Rules, part 7850.4100.
  - c. Request that prior to the public hearing, the Department of Commerce EERA submit to the administrative law judge its environmental assessment comments and analysis of the route alternatives using the selection criteria established in Minnesota Statutes, section 216E.03, subd. 7, and Minnesota Rules, part 7850.4100; evidence of compliance with environmental review procedures; and recommended permit language or specific provisions relative to acceptable routes.
  - d. Request that the administrative law judge prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project, alternatives to the proposed project, and a preferred route alternative, applying the routing criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.
2. Direct staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minnesota Statutes, section 216E.10, subd. 3, and request that state agencies submit comments prior to the last day of the public hearing.
3. Take some other action deemed appropriate.

**Staff Recommendation:** A.1, B.1, C.2, D.1, E.1(a-d), and E.2.