

November 6, 2014

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square Building
121 7th Place East
St. Paul, Minnesota 55101-2147

RE: Certificate of Need Notice of Changed Circumstances
Docket No. IP6853 and IP6866/CN-11-471

Dear Dr. Haar:

Attached are the comments of the Minnesota of Department of Commerce, Division of Energy Resources (DOC-DER) in the following matter:

The Joint Application of Black Oak Wind, LLC and Getty Wind Company, LLC for a Certificate of Need for an up to 82 MW Large Wind Project in Stearns County, Minnesota.

The petitioner is:

Lindsey A. Hemly
Attorney
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402

The Department recommends the Commission **determine that the change is acceptable without recertification**. The Department is available to answer any questions that the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ STEVE RAKOW
Rates Analyst

SR/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. IP6853 and IP6866/CN-11-471

I. INTRODUCTION

The Minnesota Public Utilities Commission's (Commission) December 31, 2012 *Order Granting Certificate of Need and Finding Environmental Report Adequate* (CN Order) described Black Oak Wind, LLC and Getty Wind Company, LLC's (Black Oak/Getty or the Companies) proposed wind farm (Project) as follows:

Applicants propose projects consisting of between 27 and 52 wind turbines between 1.5 and 3.0 MW, transformers, a project substation, 6-12 miles of turbine access roads, an operation and maintenance facility, collection lines, a 69 kV transmission line, and up to two permanent meteorological towers per project... The Applicants' plan envisions that construction of the projects will commence in 2013, and the projects will be in service by the end of 2013.

Minnesota Rules 7849.0400 subpart 2A states that "a delay of one year or less in the in-service date of a large generation or transmission facility previously certified by the Commission is not subject to review by the Commission." Further, Minnesota Rules 7849.0400 subpart 2H states "If an applicant determines that a change in size, type, timing, or ownership other than specified in this subpart is necessary for a large generation or transmission facility previously certified by the Commission, the applicant must inform the Commission of the desired change and detail the reasons for the change."

On October 28, 2014, pursuant to Minnesota Rules 7849.0400, Black Oak/Getty submitted the Companies' *Petition to Extend Certificate of Need Without Recertification or Further Hearing or in the Alternative, to Request an Exemption from Certificate of Need Requirements* (Change Petition). The Change Petition stated that final implementation of the proposed Project would be delayed by more than one year—to December 31, 2015. Black Oak/Getty attributed the revised timing to two things, uncertainty regarding extension

of the federal production tax credit (PTC) and the Mid-continent Independent System Operator, Inc. (MISO) interconnection process. Regarding the PTC the Petition states:

As the Commission is aware, for much of 2012, there was considerable uncertainty surrounding the extension of the federal production tax credit (“PTC”), which made it extremely difficult for Black Oak and Getty to determine the appropriate pricing structure for a power purchase agreement (“PPA”). It was not until Congress extended the PTC in early 2013 that Black Oak and Getty were able to begin PPA negotiations in earnest.

Regarding the MISO process, the Petition states:

The Projects – like many other Minnesota wind farms – have faced significant delays in the MISO interconnection process. Originally, Black Oak and Getty (Project No. G858/H071) were included in MISO’s February 2013 definitive planning phase (“DPP”) Study. Following completion of the DPP Study, the Projects intended to execute a generator interconnection agreement (“GIA”); however, MISO then notified the Projects that the G858/H071 interconnection was subject to restudy. The pending restudy significantly increased uncertainty surrounding upgrade costs and risks associated with GIA execution. As a result, Black Oak and Getty were unable to commit to a GIA at that time. The restudy did not commence until July 2014, and while Black Oak and Getty executed a provisional GIA with MISO and Northern States Power Company in August 2014, commercial operation is no longer possible this year.

Below are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) regarding the Change Petition.

II. ANALYSIS

A. CRITERIA

Regarding notice of a change in the size, type, timing, or ownership of a previously certified project, Minnesota Rules 7849.0400 subpart 2H states:

The Commission shall evaluate the reasons for and against the proposed change and, within 45 days of receipt of the request, notify the applicant whether the change is acceptable without recertification. The Commission shall order further hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 7849.0120.

Thus, the Department evaluates the proposed changes to the in-service date to determine if the change in timing “could reasonably have resulted in a different decision.”

B. REVISED IN-SERVICE DATE

The Department’s comments in the CN proceeding did not oppose Black Oak/Getty’s proposed timing. Specifically, the Department’s February 1, 2012 comments stated the following:

The timing of the proposed Projects does not necessarily coincide precisely with the anticipated need of any particular utility. However, the Department notes that:

- there will not likely be a one-to-one match between CN applications based on the regional need for renewable generation and Minnesota utilities’ RES compliance needs;
- additional renewable resources will be needed for certain Minnesota utilities to meet their 2016 RES requirements;
- capacity additions are typically added in “chunks” due to the benefits of economies of scale;
- the sunset of the renewable energy production tax credit for wind resources may lead to earlier wind additions than might be the case otherwise; and
- there are uncertainties involved in accomplishing the associated transmission additions or upgrades needed for integrating the output of previously approved and variously located wind generation projects.

Finally, Department notes that Minnesota Rules 7849.0400 requires the recipient of a CN to notify the Commission if the proposed in-service date is delayed by more than one year.

Therefore, the Department agrees with Black Oak/Getty that:

- denial would deny Minnesota Municipal Power Agency (MMPA)¹ the opportunity to purchase renewable, low-cost energy that will count toward satisfying MMPA's renewable energy obligations;
- no more reasonable alternatives to the Projects exist;
- the Projects continue to present real benefits to society in a manner compatible with protecting natural and socioeconomic environments; and
- there is no evidence of failure to comply with laws and regulations.

In essence, the delay appears to be beyond Black Oak/Getty's control and the project is needed by MMPA to comply with renewable energy standard milestones. Thus, the Department concludes that the change in timing could not reasonably have resulted in a different decision. Therefore, the Department recommends that the Commission notify the Companies that the proposed in-service date change is acceptable without recertification.

III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission notify the Companies that the proposed in-service date change is acceptable without recertification.

/ja

¹ The Change Petition states that Black Oak/Getty has a power purchase agreement with MMPA.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. IP6853,6866/CN-11-471

Dated this 6th day of November 2014

/s/Sharon Ferguson

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