


Staff Briefing Papers

Meeting Date	December 14, 2017	Agenda Item: *1
Company	Nobles 2 Power Partners, LLC	
Docket No.	IP-6961/CN-16-289	
	In the Matter of the Application of Nobles 2 Power Partners, LLC for a Certificate of Need for the up to 260 MW Nobles 2 Wind Project and Associated Facilities in Nobles County, Minnesota	
Issues	<ol style="list-style-type: none"> 1. Should the Commission accept the application as complete? 2. Should the Commission direct the use of the informal review process? 3. Should the Commission vary the time limits of its rules that relate to application completeness and date of the information/ER scoping meeting? 	
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 Relevant Documents	Date
Order Approving Request with Exemption	May 25, 2016
Nobles 2, Power Partners, LLC Application for Certificate of Need (8 parts)	October 13, 2017
Department of Commerce DER Comments on Completeness	October 23, 2017
Notice of Comment Period	October 26, 2017
Nobles 2, Power Partners, LLC Reply	November 20, 2017

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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.

Statement of the Issues

Should the Commission accept the application as complete?

Should the Commission direct the use of the informal review process?

Should the Commission vary the time limits of its rules that relate to application completeness and date of the information/ER scoping meeting?

Background

Nobles 2 Power Partners LLC, a subsidiary of Tenaska Wind Holdings, II, LLC, an affiliate of Tenaska, Inc. (Nobles 2 or applicant) is proposing to construct the Nobles 2 Wind Farm (project), an up to 260 megawatt (MW) wind project in Nobles County.

On April 5, 2016, the applicant filed a request for full or partial exemptions to certain information requirements for a certificate of need application for the project. In an order dated May 25, 2016, the Commission granted exemptions from some of the information requirements under Minn. Rules Chapter 7849.

On October 13, 2017, the applicant filed an application for a certificate of need for the project.¹

On October 23, 2017, the Department of Commerce (Department) Division of Energy Resources filed comments and recommendations on the application.

On October 26, 2017, the Commission issued a Notice for Comment on the completeness of the application. Initial Comments were accepted through November 16, 2017 and reply comments through November 27, 2017.

On November 27, 2017, Nobles 2 provided reply comments expressing agreement with the Department's recommendations that the Commission find the application complete and review the application using the Commission's informal comment and reply process.

Statutes and Rules

The Project falls under the definition of a "large energy facility" in Minn. Stat. § 216B.2421, subd. 2(1) because it has a combined capacity of 50,000 kilowatts or more. Under Minn. Stat.

¹ The applicant filed an application with the Commission for a site permit for the project in Commission Docket IP6964/WS-17-597 on the same date.

§ 216B.243, Subd. 2, no large energy facility can be sited or constructed without the issuance of a certificate of need (CN) by the Commission. The operative rules for this application are found in Minnesota Rules, Chapter 7849.

The operative rule for this decision is Minn. Rule 7849.0200, Subp. 5 Complete Applications. Minnesota Rule 7849.0200, Subp. 5:

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 a large electric generation facility certificate of need application can be found in Minn. Rules 7849.0240, 7849.0250, and 7849.0270 to 7849.0340.

The operative rules for the environmental review for the project are contained in Minnesota Rules, parts 7849.1000 to 7849.2100. Minnesota Rule 7849.1200 directs the Department Energy and Environmental Review and Analysis (EERA) staff to prepare and environmental report at the need stage. The environmental report must contain information on the human and environmental impacts of the proposed project associated with the size, type, and timing of the project, system configurations, and voltage. The environmental report must also contain information on alternatives to the proposed project and shall address mitigating measures for anticipated adverse impacts.

Minnesota Stat. § 216B.243, Subd. 4 states in part that a joint public hearing on need and siting shall be held unless the Commission determines that it is not feasible or more efficient, or not in the public interest to do so.²

Parties' Comments

Nobles 2 Power Partners, LLC

On October 13, 2017, Nobles 2 Power Partners, LLC (Nobles 2) filed an application with the Commission for a certificate of need for the project. The Nobles 2 Wind Farm would be comprised of 65 to 82 turbines with individual nameplate capacities ranging between 2.0 MW and 4.2 MW in Nobles County. The project would also include an electrical collection system, access roads, permanent meteorological towers, substation and interconnection facilities, an operation and maintenance facility, and other infrastructure typical of a wind farm. The project will have a footprint of approximately 42,550 acres and interconnect at an existing 115 kilovolt

² The Public hearing(s) for the site permit must be held pursuant to the requirements of Minn. Stat. § 216E.03, Subd. 6.

(kV) transmission line in the west-central portion of the project. The anticipated in-service date is the fourth-quarter of 2019.

In its application, Nobles 2 stated that it has entered into a Power Purchase Agreement with Minnesota Power (MP) whereby MP agreed to purchase up to 250 MW of the energy generated by the project.³

In addition to providing a description of the project, the application included a need summary and additional considerations, alternatives to the project, forecasting information, environmental information on the project and alternatives, and an evaluation of compliance with certificate of need criteria.

Department of Commerce

On October 23, 2017, the Minnesota Department of Commerce (Department) Division of Energy Resources filed comments and recommendations on the application. The Department provided an evaluation of the operative statutory requirements for a certificate of need for the project, a review of the completeness of the application and recommendations for procedural treatment of the application.

The Department notes that Minnesota Statutes § 216B.243 subd. 9 provides an exemption for facilities approved by the Commission as needed to meet the renewable energy standard of Minnesota Statutes § 216B.1691. The Department quoted the Petition's cover letter in concluding that Nobles 2 is not seeking an exemption from the certificate of need requirements under Minnesota Statutes § 216b.243 subd. 9:

It is also important to note that the Nobles 2 PPA [Purchased Power Agreement] includes a condition precedent that the Commission approve MP's [Minnesota Power's] entire EnergyForward Resource Package. Given that the Commission has not yet approved the Nobles 2 PPA, this Application does not limit the forecasted need for the Project to the need identified by the Commission for MP to procure 100-300 MW of wind or the need identified in MP's request for approval of the Nobles 2 PPA. This Application also demonstrates how this Project is needed to meet the Renewable Energy Standard ("RES") and other clean energy requirements in Minnesota and neighboring states.

³ Minnesota Power entered into the power purchase agreement in response to the Commission's July 18, 2016 Order approving a competitive acquisition process as part of MP's Integrated Resource Plan, Order *In the Matter of Minnesota Power's 2016-2030 Integrated Resource Plan*, Docket ID. E-015/RP-15-690 eDockets ID No. 2016-123403-01, July 18, 2016. In its July 27, 2016 petition for approval of the power purchase agreement in that docket, Minnesota Power did not request issuance of a certificate of need for the project. In a subsequent Order in that docket, the Commission noted that it had approved the acquisition of additional wind and solar generation and directed Minnesota Power to refile its wind and solar power purchase agreements for Commission approval in a separate docket, Order *In the Matter of Minnesota Power's 2016-2030 Integrated Resource Plan*, Docket ID. E-015/RP-15-690, eDockets ID No. 2017-135644-02, September 19, 2017.

The Department provided an evaluation of the certificate of need filing requirements considering the exemptions granted by the Commission in its April 28, 2016 Order. The Department concluded that the applicant met requisite filing requirements and recommended that the Commission find the application to be complete.

The Department also made a recommendation regarding the process for reviewing the application. The Department noted that it does not anticipate significant disputes in the proceeding, and therefore it did not request that the Commission order a contested case proceeding. Additionally, the Department stated that the informal comment and reply process would be sufficient to develop the issues in this proceeding.

Nobles 2 Reply Comments

In their November 27, 2017 comments, Nobles 2 agreed with the Department's recommendations, and requested that the Commission find the Application complete and review the application using the Commission's informal comment and reply comment process.

Staff Analysis

A. Completeness

Upon review of the application materials and record, staff concurs with the Department and applicant that the applicant is substantially complete.

B. Review Process

Applications for a certificate of need are typically referred to the Office of Administrative Hearings for contested case proceedings to resolve factual disputes when they exist. But the Commission also has the discretion to evaluate certificate of need requests using an informal notice and comment process. At this juncture, there appear to be no contested material facts. Staff therefore requests that the Commission authorize staff to develop the record and prepare the case for Commission action without contested case proceedings, unless those proceedings are later determined to be necessary.

The informal review process consists of comments 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 and preparation of a report with findings, conclusions and recommendations.

With respect to public participation, the informal review process allows anyone to submit substantive comments on the merits of a need application. In addition, the informal review process provides for the same opportunities for members of the public to express their concerns with the project as a contested case, without requiring the more formal requirements of a contested case procedure. Staff notes that an environmental report on the project will be

produced by the Department, 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:

1. the name, telephone number, and e-mail address of the Commission employee designated to facilitate citizen participation in the process;
2. request that Department staff continue to study issues and indicate during the hearing process its position on the reasonableness of granting a certificate to the applicant;
3. require that the applicant facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff;
4. a request that the applicant place a CD or hard copy of the Application for review in a Government Center and/or Public Library in the vicinity of the project;
5. 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
6. a directive that the Applicants 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 obtained from the newspapers selected.

C. Scheduling and Joint Proceeding of Need and Siting

The Commission must hold joint public hearings on the need and siting of the project unless it finds that it is not feasible or less efficient or not in the public interest to do so. Staff notes that, because a site permit cannot be issued prior to granting a certificate of need for the project, it is feasible, efficient and in the public interest to hold joint public hearings for the siting and need dockets for the project.⁴

Because the review processes for a certificate of need application and an LW ECS site permit application do not correlate well and are subject to change, staff provides an example of how the proceedings could proceed concurrently predicated upon a joint public hearing for both dockets.

The example schedule adds a public information meeting to the site permitting process that would be held jointly with the required certificate of need environmental report scoping meeting. The required public information meeting prescribed in the LW ECS siting rules would then be held in combination with the public hearing required under the certificate of need

⁴ Minnesota Rule 7854.0500, Subp. 2.

review process. This has been the approach followed in the most recent LWECs dockets that required both a certificate of need and site permit.

In addition, staff recommends the Commission elect to request the administrative law judge preside over the joint public hearing and prepare full findings of fact (rather than a summary of comments received). To accomplish this, Staff has added a short briefing and exception process to the end of the example schedule. This approach would add approximately 30 to 45 days to the process, but would likely provide for a more robust record for the Commission when making its final decision on the site permit. This approach would also comport with the 12-month certificate of need review schedule contemplated in statute.

EXAMPLE SCHEDULE

Combined Certificate of Need and LWECs Site Permit Processes

	Certificate of Need Application	Site Permit Application	Date or <u>ESTIMATED</u> Date	Notes
1	Application Filed	Application Filed	10/13/2017	
2	Order Accepting Application	Order Accepting Application	01/19/2018	
3	Notice of Application and ER Scoping Meeting	Notice of Application Acceptance*, Public Information & Draft Site Permit Scoping Meeting	2/9/2018	Notice required 15 days prior to meeting. *Notice required 15 days after acceptance of application.
4	ER Scoping Meeting	Public Information Meeting & Draft Site Permit Comments	2/26/2018	
5	ER Scoping Comment Period Closes*	Draft Site Permit Comment Period	3/19/2018	*At least 20 day comment period from date of meeting.
6	ER Scope Issued		03/29/2018	Within 10 days of close of comment period.
7		Order Issuing Draft Site Permit	Agenda: 04/5/2018 Order: 04/26/2018	

	Certificate of Need Application	Site Permit Application	Date or <u>ESTIMATED</u> Date	Notes
8	Comment and Reply on Merits of CN Application		Start: 3/30/2018 End: TBD	
		Comments on Draft Site Permit	Start: 4/27/2018 End: 05/28/2018	Minimum 30 days after publication.
9	ER Issued		04/30/2018	
10	Notice of ER and Public Hearing	Notice of Public Hearing	05/01/2018	
11	Joint Public Hearing	Joint Public Hearing	06/05/2018	
12	Comment Period on Merits Closes; Public Hearing Comment Period Closes	Comment Period on Draft Site Permit Closes; Public Hearing Comment Period Closes	06/22/2018	
13	Post Hearing Briefing	Post Hearing Briefing	07/20/2018	As determined by the ALJ and/or PUC
14	ALJ Report	ALJ Report	08/21/2018	Findings of fact, conclusions of law, and recommendation.
15	Exceptions to ALJ Report	Exceptions to ALJ Report	09/06/2018	15 days of filing of the ALJ Report.
16	Commission Decision	Commission Decision	11/06/2018	Within 60 days of ALJ Report

Notes:

- This is an example schedule only. Dates may change as necessary or by direction of administrative law judge, if so ordered.
- This schedule assumes approval of variances of timing requirements in Minnesota Rules 7854.0600, Subp. 1, 7854.0800, Subp. 1, and 7854.100, subp.2.
- A 12-month timeline for review of certificate of need application is anticipated.

- 180 day timeline for review of site permit application is contemplated in statute and rules.
- Because the certificate of need and site permit applications may be reviewed jointly and because a site permit cannot be issued prior to a certificate of need, the review timeline would follow the 12-month certificate of need process.

D. Rule Variances

Minn. R. 7849.0200, subp. 5, requires the Commission to make a decision on the completeness of an application within 30 days of its filing. A timeline of 30 days did not allow the necessary time to review the application, solicit comments, schedule a Commission meeting and prepare a written order.

Additionally, Minn. R. 7849.1400, subp. 3 requires the Department to hold a public meeting within 40 days after receipt of an application for a certificate of need. In similar dockets, the Department and Commission staff typically hold a joint public information/ Environmental Review scoping meeting scheduled upon acceptance of the application. A 40-day timeline is does not allow sufficient time to solicit comments on the application completeness, schedule a Commission decision and issue an order accepting the application as complete.

Staff believes there is good cause for the Commission to vary the time limits specified above to ensure development of a complete record for the Commission's decision. Staff believes the requisite conditions for approval of a variance as outlined in Minn. Rule 7829.3200, subp. 1, are met as follows:

- 1) Enforcing the 30-day and 40-day time frames would impose an excessive burden upon the public, upon parties to the proceeding, and upon the Commission and the Department because it would not allow adequate time to review the application, schedule a Commission meeting, prepare a written order and hold a public and information meeting;
- 2) Varying the 30-day and 40-day time frames would not adversely affect the public interest. Varying the 30-day and 40-day time frames would instead serve the public interest by allowing more time for public comment on, and Commission consideration of, the application; and
- 3) Varying the 30-day and 40-day time frames would not conflict with any standards imposed by law.

Decision Options

A. Application Completeness

1. Accept the application as complete.
2. Reject the application and indicate the specific deficiencies.

3. Take some other action deemed more appropriate.

B. Regulatory Proceeding

1. Refer the matter to the Office of Administrative Hearings for a contested case proceeding.
2. Require a prehearing conference at a date, time, and place to be set by the administrative law judge in consultation with the Applicant, Department and Commission staff.
3. Direct that the certificate of need application be reviewed using the informal or expedited process.
4. Direct that the public hearing for the certificate of need proceeding be held jointly with that of the site permit application in Commission Docket IP6964/WS-17-597.
5. Take some other action deemed more appropriate.

C. Administrative Responsibilities

1. Delegate administrative authority to the Executive Secretary and include the following additional items in the appropriate order(s) issued in this matter:
 - a. Provide the name, telephone number, and email address of the staff person (Bret Eknes) designated as Public Advisor to facilitate citizen participation in the process.
 - b. Request that the Department continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need.
 - c. Require the applicant to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff.
 - d. Require applicant to place a copy of the application (printed or compact disc) for review in at least one government center or public library near where the project is located.
 - e. Direct Commission staff to work with the Administrative Law Judge and Department staff to select a suitable location for the public hearings on the application.
 - f. Direct the public advisor to e-File the public comments received once the application is open for comment.
2. Take some other action deemed more appropriate.

D. Variance Requests

1. Vary Minn. R. 7849.0200, subp. 5, and extend the 30-day time frame for Commission decision on application completeness.
2. Vary Minn. R. 7849.1400, subp. 3, and extend the 40-day time frame for the Commission staff and the Department of Commerce to hold a public information/ER scoping meeting.
3. Take some other action deemed more appropriate.

Staff Recommendations: A.1, B.2, B.3, B.4, C.1 (a-f), D.1 and D.2.