

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben  
Valerie Means  
Matthew Schuerger  
Joseph K. Sullivan  
John A. Tuma

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of Big Bend Wind, LLC for a Certificate of Need for the up to 308 MW Big Bend Wind Project in Cottonwood and Watonwan Counties, Minnesota.

ISSUE DATE: March 11, 2021

DOCKET NO. IP-7013/CN-19-408

DOCKET NO. IP-7013/WS-19-619

In the Matter of the Application of Big Bend Wind, LLC for a Large Wind Energy Conversion System Site Permit for the up to 308 MW Big Bend Wind Project in Cottonwood and Watonwan Counties, Minnesota.

DOCKET NO. IP-7013/TL-19-621

DOCKET NO. IP-7014/CN-19-486

In the Matter of the Application of Big Bend Wind, LLC for a Route Permit for a 161 kV High Voltage Transmission Line in Cottonwood, Watonwan and Martin Counties, Minnesota.

DOCKET NO. IP-7014/GS-19-620

ORDER ACCEPTING APPLICATIONS AS COMPLETE, ESTABLISHING REVIEW PROCEDURES, GRANTING VARIANCES, AND NOTICE OF AND ORDER FOR HEARING

In the Matter of the Application of Red Rock Solar, LLC for a Certificate of Need for the up to 60 MW Red Rock Solar Project in Cottonwood County, Minnesota.

In the Matter of the Application of Red Rock Solar, LLC for a Site Permit for the up to 60 MW Red Rock Solar Project in Cottonwood County, Minnesota.

**PROCEDURAL HISTORY**

On June 19, 2019, Big Bend Wind, LLC (Big Bend Wind) and Red Rock Solar, LLC (Red Rock Solar) (jointly, the Applicants or the Companies) submitted a request for exemptions from certain certificate of need application content requirements and Rule 7829.2550 HVTL Notice Plan.

On September 24, 2019, the Commission issued an order granting exemptions from certain certificate of need application content requirements requested by the Applicants.

On October 10, 2019, Big Bend Wind filed its Certificate of Need Notice Plan Approval Request.

On December 4, the Commission issued an order approving Big Bend Wind's proposed Notice Plan.

On August 27, 2020, Red Rock Solar filed a letter stating its intent to file a site permit application under the alternative permitting process.

On August 28, 2020, Big Bend Wind filed a letter stating its intent to file a route permit application under the alternative permitting process.

On November 9, 2020, Big Bend Wind filed three separate applications in support of its proposed up to 308 megawatt (MW) wind farm and an 18-mile 161 kilovolt (kV) transmission line to be located in portions of Cottonwood, Martin, and Watonwan counties (collectively, the Wind Project):

- a certificate of need application for the wind farm and the associated 161 kV transmission line (Docket No. IP-7013/CN-19-408);
- a large wind energy conversion system (LWECS) site permit application (Docket No. IP-7013/WS-19-619); and
- a high-voltage transmission line (HVTL) route permit application for the proposed 161 kV transmission line (Docket No. IP-7013/TL-19-621).

Also on November 9, 2020, Red Rock Solar filed separate applications for a certificate of need (Docket No. IP-7014/CN-19-486) and site permit (Docket No. IP-7014/GS-19-620) for its proposed solar energy conversion facility with an up to 60 MW alternating current (AC) nameplate capacity, in Midway Township, Cottonwood County, Minnesota (the Solar Project).

On November 23, 2020, the Commission issued a notice soliciting comments on the completeness of the Companies' certificate of need, site permit, and route permit applications. In addition to completeness, the notice also requested comments on:

- whether either or both the certificate of need applications and the Big Bend Wind site permit application should be referred to the Office of Administrative Hearings (OAH) for contested case proceedings;
- combining the environmental report and environmental assessment processes and completion;
- the advisability of combining the certificate of need, site permit, and route permit proceedings;
- whether the Commission should hold joint proceedings on the Companies' applications;
- the presence of contested issues of fact; and
- whether an advisory task force should be appointed for the Big Bend Wind route permit application or the Red Rock Solar site permit application.

By December 21, 2020, the Commission received comments on the Companies' applications from the following:

- the Minnesota Department of Commerce, Division of Energy Resources (DOC-DER or the Department) and the Minnesota Department of Commerce, Energy Environmental Review and Analysis (DOC-EERA);
- LIUNA Minnesota & North Dakota (LIUNA) and International Union of Operating Engineers, Local 49 (Local 49);<sup>1</sup>
- the Minnesota Historical Society;<sup>2</sup>
- the Minnesota Pollution Control Agency;<sup>3</sup>
- the Southwest Regional Development Commission;<sup>4</sup>
- the Lower Sioux Indian Community Tribal Historic Preservation Office; and
- several members of the public.<sup>5</sup>

By December 24, 2020, the Commission received reply comments from the Applicants and DOC-EERA.

On December 30, 2020, the Applicants submitted a corrected Notice of Filing of Certificate of Need, Site Permit, and Route Permit Applications for the Big Bend Wind Project and Certificate of Need and Site Permit Applications for the Red Rock Solar Project.

On January 14, 2021, the Applicants submitted updated public versions of their "Phase 1a Literature Review and Natural Heritage Information System Request" as recommended by DOC-EERA.

On February 4, 2021, the applications came before the Commission.

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<sup>1</sup> LIUNA and Local 49 both expressed support for the projects but did not comment on the completeness of the applications.

<sup>2</sup> The Minnesota Historical Society submitted a request to intervene in the permitting process for the Big Bend Wind Project.

<sup>3</sup> The Minnesota Pollution Control Agency's comments did not address completeness of the applications or the review processes to be used.

<sup>4</sup> The Southwest Regional Development Commission's comments did not address completeness of the applications or the review processes to be used.

<sup>5</sup> Brad Hutchinson, a resident from the Wind Project area, submitted comments and testimony at the February 4, 2021 Commission meeting requesting that the Big Bend Wind site permit application be referred to the OAH for contested case proceedings.

## **FINDINGS AND CONCLUSIONS**

### **I. Summary of Commission Action**

In this order the Commission will accept the Companies' applications as substantially complete.

The Commission will review the Applicants' certificate of need applications using its informal review process under Minn. R. 7829.1200, refer the Big Bend Wind site permit application to the OAH for a contested case proceeding, and refer the Big Bend Wind route permit application and the Red Rock Solar site permit application to the OAH for review under the alternative permitting process defined in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900.

The Commission will also establish additional procedural and administrative requirements, request that the assigned Administrative Law Judge (ALJ) conduct the proceedings as set forth herein, and vary the timelines for determining completeness under Minn. R. 7849.0200, subp. 5, 7854.0600, subp. 1, and 7854.0800, subp. 1.

### **II. The Projects**

The Applicants are proposing to construct up to 335 MW of new renewable energy generation in Cottonwood and Watonwan Counties, Minnesota. As proposed, the renewable generation could consist of up to 308 MW of wind, or a combination of wind and up to 60 MW of solar. In addition, Big Bend Wind is proposing to construct an 18-mile 161 kV transmission line and associated facilities to support the Wind and Solar Projects. The transmission line is needed to interconnect the Wind and Solar Projects to the transmission grid.

### **III. The Jeffers Petroglyphs Historic Site and Request to Intervene**

The proposed Big Bend Wind Project is approximately 5.2 miles from the Jeffers Petroglyphs site. The Jeffers Petroglyphs site is of significant cultural importance to several American Indian Tribes and is actively used for tribal ceremonies. The site is also considered to be sacred and pivotal to various tribal origin stories.

The Jeffers Petroglyphs site is also part of Minnesota's historic site network.<sup>6</sup> The Minnesota Historical Society, citing its duties and responsibilities as directed by state statute, requested to intervene in the permitting process for the Big Bend Wind Project.<sup>7</sup> The Minnesota Historical Society contends that introduction of wind turbines and/or transmission lines to the Jeffers Petroglyphs viewshed would dramatically diminish the integrity of the property's significant historic and sacred features.<sup>8</sup>

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<sup>6</sup> Minn. Stat. § 138.662, subd. 17.

<sup>7</sup> As directed by Minn. Stat. §§ 138.661 to 138.669, the Minnesota Historical Society operates the state's historic site network in partnership with the State of Minnesota, state departments, agencies, and political subdivisions, and is responsible for protecting the physical features and historic character of historic sites.

<sup>8</sup> The Lower Sioux Indian Community's Tribal Historic Preservation Office submitted comments opposing the construction of the Big Bend Wind Project and urging the Commission to consider the detrimental impacts of the Wind Project to Red Rock Ridge and the Jeffers Petroglyphs Historic Site.

The Commission has considered the Minnesota Historical Society's request to intervene as a full party in this matter. The Applicants raised no objections to the Minnesota Historical Society's request. Accordingly, the Commission will grant the Minnesota Historical Society's petition to intervene.

During the Commission meeting, the Lower Sioux Indian Community's Tribal Historic Preservation Office indicated it had not made a decision on whether it would intervene as a formal party in the permitting process for the Big Bend Wind Project. The Commission appreciates and welcomes participation in the proceedings by impacted tribal nations.

#### **IV. Jurisdiction**

##### **A. Certificate of Need**

Minn. Stat. § 216B.243 precludes construction of any large energy facility without a certificate of need issued by the Commission. Minn. Stat. § 216B.2421, subd. 2(1) defines a "large energy facility" as "any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system."

The proposed Wind Project is a large energy facility because it includes both an up to 308 MW LWECS and related 161 kV HVTL. The proposed Solar Project is also a large energy facility because it qualifies as a large electric power generating plant with a capacity of 50 MW or more. Accordingly, each project requires a certificate of need from the Commission.

##### **B. Site Permit**

Under Minn. Stat. § 216F.04, no person may construct a LWECS without the issuance of a site permit by the Commission. The proposed Wind Project is a LWECS as defined by Minn. Stat. § 216F.01, subd. 2, because it is a combination of wind energy conversion systems with a combined nameplate capacity of 5 MW or more. Accordingly, the Wind Project requires a site permit from the Commission.

Under Minn. Stat. § 216E.03, subd. 1, no person may construct a large electric power generating plant without the issuance of a site permit from the Commission. The proposed Solar Project is a large electric power generating plant under Minn. Stat. § 216E.01, subd. 5, because it is an electric generating facility designed for or capable of operation at a capacity of 50 MW or more. Accordingly, the Solar Project requires a site permit from the Commission.

##### **C. Route Permit**

Under Minn. Stat. § 216E.03, subd. 2, no person may construct a HVTL without a route permit from the Commission. A HVTL includes any transmission line longer than 1,500 feet that will operate at a voltage of at least 100 kV.<sup>9</sup> Big Bend Wind has proposed constructing an 18-mile 161 kV transmission line requiring it to obtain a route permit. Big Bend Wind filed its route permit application under Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900, which

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<sup>9</sup> Minn. Stat. § 216E.01, subd. 4.

govern the alternative review process for eligible projects, including transmission lines that will operate at a voltage between 100 and 200 kV.

## **V. Applications Completeness**

### **A. Certificate of Need**

Under Minn. R. 7849.0220, an application for a certificate of need for a large energy facility must include all the information required by parts 7849.0240, 7849.0250, 7849.0270 to 7849.0320, and 7849.0340. The Commission may exempt certain data requirements pursuant to Minn. R. 7849.0200, subp. 6.

DOC-DER reviewed the Companies' certificate of need applications for completeness under Minn. R. 7849.0240 to 7849.0340, along with the exemptions granted by the Commission in its September 24, 2019 order, and recommended that the Commission find the applications complete. The Commission has reviewed the applications and the parties' comments and agrees with the Department. The Commission will therefore accept the certificate of need applications as complete.

### **B. Site Permit**

A LWECS site permit application must include all the information required under Minn. R. 7854.0500. DOC-EERA reviewed the Big Bend Wind Project site permit application for completeness under Minn. R. 7854.0500 and recommended that the Commission find the Big Bend Wind site permit application substantially complete.

A large electric power generating plant site permit application must include all information required under Minn. R. 7850.3100. DOC-EERA reviewed the Red Rock Solar site permit application for completeness under Minn. R. 7850.3100 and recommended that the Commission find the site permit application substantially complete.

Having reviewed the site permit applications and the parties' comments, the Commission concurs with DOC-EERA and will therefore accept the site permit applications as substantially complete.

### **C. Route Permit**

A HVTL route permit application must include all the information required under Minn. R. 7850.3100. DOC-EERA evaluated the Big Bend Wind route permit application for completeness under Minn. R. 7850.3100 and recommended that the Commission find the route permit application substantially complete.

Having reviewed the application and the parties' comments, the Commission concurs with DOC-EERA and will therefore accept the Big Bend Wind route permit application as substantially complete.

## **VI. Review Process**

Under Minn. R. 7829.1000, rules of practice and procedure, the Commission must refer matters to the OAH for contested case proceedings when there are contested material facts involved or where significant issues cannot otherwise be resolved to the Commission's satisfaction.

Alternatively, under Minn. R. 7829.1200, subp. 1, the Commission may authorize the use of informal or expedited proceedings when: (1) there are no material facts in dispute; (2) parties have agreed to informal or expedited proceedings; or (3) informal or expedited proceedings are required by statute.

### **A. Informal Process—Big Bend Wind (19-408) and Red Rock Solar (19-486) Certificate of Need Applications**

DOC-DER recommended that the Commission evaluate the certificate of need applications using the Commission's informal comment and reply process. The Department stated that it did not anticipate significant disputes in this proceeding as it relates to the certificate of need analyses, and that reliance on the Commission's normal process of informal comments and reply comments is sufficient to develop the issues. The Applicants agreed with the Department's recommendation. The Commission will therefore direct that the informal comment and reply process be used for developing the record as it relates to the certificate of need applications.

Minn. R. 7849.1000 to 7849.2100, establishes the requirements concerning preparation of an Environmental Report for a large energy facility requiring a certificate of need. Under Minn. R. 7849.1900, in the event an applicant for a certificate of need for a large energy facility applies to the Commission for a site permit or route permit prior to the time the Department completes the Environmental Report for the certificate of need, the Department may elect to prepare an Environmental Assessment in lieu of the required Environmental Report.

### **B. Alternative Review Process—Big Bend Wind Route Permit Application and Red Rock Solar Site Permit Application**

#### **1. Big Bend Wind Route Permit Application (19-621)**

Big Bend Wind filed its route permit application under Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900, which govern the alternative review process for eligible projects, including transmission lines that will operate at a voltage between 100 and 200 kV.

To facilitate development of the record on route permit issues, the Commission will authorize use of the alternative permitting process set forth in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900. Under this process, the Commission requests that the OAH hold at least one public hearing, scheduled in conjunction with Commission staff. The Commission also requests that the ALJ in this case prepare findings of fact, conclusions of law, and recommendations, including any modifications and conditions to the route permit.

## **2. Red Rock Solar Site Permit Application (19-620)**

Red Rock Solar filed its site permit application under the alternative permitting process set forth in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900. The proposed Solar Project is eligible for review under the alternative permitting process because it is a large electric power generating plant that is powered by solar energy.<sup>10</sup>

The Commission will therefore refer the Red Rock Solar site permit application to the OAH for review under the alternative permitting process defined in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900. Under this process, the Commission requests that the OAH hold at least one public hearing, scheduled in conjunction with Commission staff. The Commission also requests that the ALJ in this case prepare findings of fact, conclusions of law, and recommendations, including any modifications and conditions to the site permit.

## **3. Environmental Assessment**

Minn. R. 7850.3700, requires preparation of an Environmental Assessment for projects being reviewed under the alternative permitting process. DOC-EERA is responsible for preparing the Environmental Assessment on behalf of the Commission. The Environmental Assessment must provide information on the human and environmental impacts of the proposed project and of alternative sites or routes; the feasibility of each alternative site or route considered; and mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified.

## **4. Advisory Task Force**

Under Minn. Stat. § 216E.08, the Commission may appoint an advisory task force to aid the environmental review process. However, the Commission is not required to appoint an advisory task force for every project. DOC-EERA analyzed the merits of establishing an advisory task force for the Big Bend Wind route permit application and the Red Rock Solar site permit application and did not recommend that a task force be established in this proceedings. The Commission agrees with DOC-EERA's recommendations and will not establish an advisory task force at this time.

## **C. Contested Case Proceedings—Big Bend Wind Site Permit Application (19-619)**

DOC-EERA recommended that the Commission proceed with a contested case for the Big Bend Wind site permit application. DOC-EERA indicated that it is aware of contested issues of fact with respect to the application for the proposed Wind Project. These issues include the potential viewshed impacts from the wind turbines to the Jeffers Petroglyphs site, and the potential use of eminent domain regarding the HVTL.<sup>11</sup>

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<sup>10</sup> Minn. Stat. § 216E.04, subd. 2(8), provides for an alternative review process for large electric power generating plants that are powered by solar energy.

<sup>11</sup> During the Commission meeting, the Applicants confirmed that they had obtained 100% of the private easements needed for the preferred route and that it did not intend on using eminent domain in this proceeding.



DOC-EERA explained that a contested case proceeding would ensure complete record development and engagement of the interested American Indian Tribes impacted by the Wind Project. DOC-EERA also stated that an ALJ Report with recommendations and findings of fact on the proposed Wind Project would assist the Commission in its decisions. The Applicants did not oppose referring the limited issue of the Wind Project's potential impacts on the Jeffers Petroglyphs to a contested case proceeding.

The Commission finds that material issues of fact have been raised regarding the Big Bend Wind site permit application, and that a contested case hearing would aid the Commission in making a final determination. The Commission will therefore direct that contested case proceedings be used to develop the record regarding the potential impacts of the Wind Project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, related to cultural and archaeological impacts, including impacts to the Jeffers Petroglyph Site.

#### **D. Joint Review of Projects**

Under Minn. R. 7849.1900, the Commission has authority to conduct joint proceedings on certificate of need, route permit, and site permit applications. Minn. Stat. § 216B.243 expresses a preference for a joint public hearing of the site, route, and certificate of need applications.

The Companies requested that the Commission order a joint regulatory review process for the Big Bend Wind route permit, site permit, and certificate of need applications, and the Red Rock Solar site permit and certificate of need applications. DOC-DER and DOC-EERA recommended that the applications be processed together and did not oppose a joint review process.

The Commission agrees with the Department and DOC-EERA and concludes that it is feasible, efficient, and in the public interest to hold joint public meetings, joint public hearings, and allow combined environmental review on the Companies' certificate of need, site permit, and route applications. Therefore, the Commission will direct that the public meetings and hearings for the Big Bend Wind certificate of need (Docket No. IP-7013/CN-19-408), site permit (Docket No. IP-7013/WS-19-619), and route permit (Docket No. IP-7013/TL-19-621) applications and the Red Rock Solar certificate of need (Docket No. IP-7014/CN-19-486) and site permit (Docket No. IP-7014/GS-19-620) applications be held jointly, and that environmental review be conducted jointly, to the extent practicable.

To ensure proper development of the record, the Commission will delegate administrative authority to the Executive Secretary. Bret Eknes is the Commission's Public Advisor to facilitate citizen participation in the review process. His phone number is (651) 201-2236 and his email is [Bret.Eknes@state.mn.us](mailto:Bret.Eknes@state.mn.us). The Commission will also establish related notification and procedural requirements as described below.

## **VII. Referral to OAH**

### **A. Referral for Alternative Proceedings—Big Bend Wind Route Permit Application (19-621) and Red Rock Solar Site Permit Application (19-620)**

To facilitate development of the record on the Big Bend Wind route permit and Red Rock Solar site permit issues, the Commission will authorize use of the alternative permitting process set forth in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900. Under this process, the Commission requests that the OAH hold at least one public hearing, scheduled in conjunction with Commission staff. The Commission also requests that the ALJ in this case prepare findings of fact, conclusions of law, and recommendations.

### **B. Referral for Contested Case Proceedings—Big Bend Wind Site Permit Application (19-619)**

With respect to the Wind Project, the Commission finds that it cannot resolve the issues raised in the Big Bend Wind site permit application based on the record before it. The issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the OAH for contested case proceedings.

The ALJ assigned to this matter will conduct hearings as described in this order and submit a report to the Commission. The Commission requests that the ALJ assigned to this matter establish a schedule for the informal process and contested case hearing that generally adheres to the timelines suggested by DOC-EERA staff as provided in Table 3 of its December 15, 2020 Comments and Recommendations.

Following receipt of the ALJ's Report, the Commission will proceed to make its final decision in accordance with Minn. Stat. §§ 14, 216B, 216E, and 216F.

## **VIII. Procedural Outline**

### **A. Administrative Law Judge**

The ALJ assigned to this case is James LaFave. His address is as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. His mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620. He can be reached through his legal assistant, Lisa Armstrong at 651-361-7888, [Lisa.Armstrong@state.mn.us](mailto:Lisa.Armstrong@state.mn.us).

### **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57–14.62; the rules of the OAH, Minn. R. 1405.0200 to 1405.2700. Regarding any issue on which chapter 1405 is silent, the provisions of Minn. R. 1400.5100 to 1400.8400 regarding contested cases shall apply, and to the extent they are not superseded by those rules, the Commission's rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.4000. Hearings may be recessed and reset by the ALJ pursuant to Minn. R. 1405.1400 to 1405.2300.

Copies of these rules and statutes may be purchased from the Minnesota Bookstore of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.mn.gov/pubs](http://www.revisor.mn.gov/pubs).

The OAH conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. R. 1400.6700 to 1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Bret Eknes (651) 201-2236, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota, 55101-2147.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the ALJ if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified neutral interpreter if necessary. Persons must promptly notify the ALJ if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the ALJ after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the ALJ within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the ALJ, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are the Applicants, DOC-DER, and the Minnesota Historical Society. Other persons wishing to become formal parties must do so pursuant to Minn. R. 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition, and subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Rule chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including but not limited to the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the ALJ and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention, the right to submit direct testimony and conduct cross-examination of other parties' witnesses, and the duty to submit testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. R. 1405.0500, subp. 1(I), and is not intended to be comprehensive. Interested parties are encouraged to review chapter 1405 to identify the scope of rights and authority to act given to “persons” or restricted to “parties” under the various provisions of that chapter.

### **D. Prehearing Conference**

A prehearing telephone conference will be held on Monday, April 12, 2021 at 1:30 pm, via telephone, using the following call-in information: (888) 742-5095, conference code 454 161 2416#.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

### **E. Ex Parte communications**

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth in Minn. R. 7845.7300 to 7845.7400, which all parties are urged to consult.

## **IX. Rule Variances**

Under Minn. R. 7829.3200, the Commission may vary any of its rules upon making the following findings:

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.

### **A. Minn. R. 7849.0200, subp. 5**

Under Minn. R. 7849.0200, subp. 5, the Commission must make a decision on the completeness of the certificate of need application within 30 days of its filing. This timeline does not allow sufficient time to review the application, solicit comments, schedule a Commission meeting, and prepare a written order. The Commission will therefore vary the 30-day timeline making the following findings:

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

### **B. Minn. R. 7854.0600, subp. 1**

Under Minn. R. 7854.0600, subp. 1, the Commission must make a decision on the completeness of the site permit application within 30 days of its filing. This timeline does not allow sufficient time to review the application, solicit comments, schedule a Commission meeting, and prepare a written order. The Commission will therefore vary the 30-day timeline making the following findings:

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

**C. Minn. R. 7854.0800, subp. 1**

Under Minn. R. 7854.0800, subp. 1, the Commission must make a preliminary determination on whether to issue a site permit within 45 days of accepting an application. To ensure sufficient time to accommodate public input, the Commission will vary the 45-day timeline, making the following findings:

1. Enforcing the 45-day timeline would impose an excessive burden on the public, on parties to the proceeding, and on the Commission, by jeopardizing the thoroughness of the Commission's decision-making process.
2. Varying the 45-day timeline would not adversely affect the public interest, and would in fact serve the public interest by protecting the Commission's decision-making process.
3. Varying the 45-day timeline would not conflict with any other standards imposed by law.

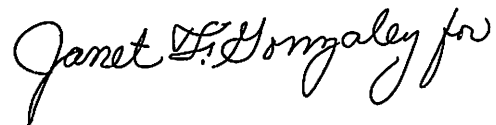
**ORDER**

1. The Commission accepts the Big Bend Wind Certificate of Need, Site Permit, and Route Permit Applications as substantially complete.
2. The Commission accepts the Red Rock Solar Certificate of Need and Site Permit Applications as substantially complete.
3. The Commission directs that the Big Bend Wind and Red Rock Solar Certificate of Need Applications be reviewed using the informal review process under Minn. Rule 7829.1200 and requests preparation of findings of fact, conclusions of law, and recommendations.
4. The Commission directs that the Big Bend Wind Site Permit Application be referred to the Office of Administrative Hearings for a contested case proceeding to examine only the potential impacts of the project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, related to cultural and archaeological impacts, including impacts to the Jeffers Petroglyph Site, and other issues that may be added at a future time.
5. The Commission directs that the Big Bend Wind Route Permit Application be referred to the Office of Administrative Hearings for review under the alternative permitting process defined in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900 and requests preparation of findings of fact, conclusions of law, and recommendations, including any modifications and conditions to the route permit.
6. Based on the commitment from the Applicant that it will be at least 50 MW, the Commission directs that the Red Rock Solar Site Permit Application be referred to the Office of Administrative Hearings for review under the alternative permitting process defined in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900 and requests preparation of findings of fact, conclusions of law, and recommendations, including any modifications and conditions to the site permit of a preferred site and permit conditions.

7. The Commission authorizes joint public meetings, joint public hearings, and combined environmental review of the Big Bend Wind Project's Certificate of Need, Site Permit, and Route Permit Applications and the Red Rock Solar Project's Certificate of Need and Site Permit Applications to the extent practicable, including the preparation of an Environmental Assessment in lieu of an Environmental Report.
8. The Commission takes the following administrative actions for developing the record:
  - a. Require a prehearing conference at a date, time, and place to be set by the Administrative Law Judge in consultation with Commission staff.
  - b. Authorize the Administrative Law Judge and Commission staff to facilitate joint proceedings including the certificate of need, site, and route permit applications for both the Big Bend Wind and Red Rock Solar projects to the extent practical.
  - c. Delegate administrative authority, including timing issues, to the Executive Secretary.
  - d. Identify Bret Eknes as the Commission's Public Advisor who will facilitate citizen participation in the process.
  - e. Direct staff to contact state agency representatives regarding their participation in the review proceeding.
  - f. Request that the Department of Commerce continue to study the issues and indicate during the hearing process through testimony or comment its position on the reasonableness of granting a certificate of need, site permit, and a route permit.
  - g. Require the Applicants to facilitate in every reasonable way the continued examination of the issues.
  - h. Require the Applicants to place a print or electronic copy of the certificate of need, site permit, and route permit applications in the government centers of each of the three counties where the proposed project is located.
  - i. Direct the Applicants to work with Commission staff to arrange for publication of the notices related to public information meetings and public hearings in newspapers of general circulation under the timelines prescribed in rule and statute, that such notice be in the form of visible display ads, and that proof of publication be obtained from the newspapers selected.
9. The Commission grants the Minnesota Historical Society's petition to intervene and the Commission welcomes formal intervention status by any impacted tribal nation.
10. The Commission hereby varies Minn. R. 7849.0200, subp. 5, and extends the 30-day time frame for a Commission decision on the completeness of the certificate of need applications for the Big Bend Wind and Red Rock Solar projects.
11. The Commission hereby varies Minn. R. 7854.0600, subp. 1, and extends the 30-day time frame for a Commission decision on Big Bend LWECs site permit application completeness.

12. The Commission hereby varies Minn. R. 7854.0800, subp. 1, and extends the 45-day time frame for a Commission decision on the issuance of a draft site permit.
13. The Commission requests that the ALJ establish a schedule for the informal process and contested case hearing that generally adheres to the timelines suggested by DOC-EERA staff as provided in Table 3 of its December 15, 2020 Comments and Recommendations.
14. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert  
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing or speech impairment may call using their preferred Telecommunications Relay Service or email [consumer.puc@state.mn.us](mailto:consumer.puc@state.mn.us) for assistance.



STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Application of Big Bend Wind, LLC for a Large Wind Energy Conversion System Site Permit for the up to 308 MW Big Bend Wind Project in Cottonwood and Watonwan Counties, Minnesota.

**NOTICE OF APPEARANCE**

**PLEASE TAKE NOTICE that:**

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**<sup>1</sup>

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

**Party's/Agency's Name:** \_\_\_\_\_

Email: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Party's/Agency's Attorney:** \_\_\_\_\_

Firm Name: \_\_\_\_\_

Email: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Respondent's/Opposing Party's Name:** \_\_\_\_\_

Email: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Signature of Party/Agency or Attorney**

<sup>1</sup> In order to opt in to electronic notice, this form must be emailed to [OAH.efiling.support@state.mn.us](mailto:OAH.efiling.support@state.mn.us). If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2017).

## CERTIFICATE OF SERVICE

I, Leesa Norton, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

**Minnesota Public Utilities Commission  
ORDER ACCEPTING APPLICATIONS AS COMPLETE, ESTABLISHING  
REVIEW PROCEDURES, GRANTING VARIANCES, AND NOTICE OF AND  
ORDER FOR HEARING**

Docket Number **IP-7013/CN-19-408; IP-7013/WS-19-619; IP-7013/TL-19-621; IP-7014/CN-19-486; IP-7014/GS-19-620**

Dated this 11th day of March, 2021

/s/ Leesa Norton

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	Yes	OFF_SL_19-408_19-408
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-408_19-408
Kate	Fairman	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_19-408_19-408
Annie	Felix Gerth	annie.felix-gerth@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_19-408_19-408
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_19-408_19-408
Lucas	Franco	lfranco@liunagroc.com	LIUNA	81 Little Canada Rd E  Little Canada, MN 55117	Electronic Service	No	OFF_SL_19-408_19-408
Brenna	Gunderson	Brenna.gunderson@apexcleanenergy.com	Apex Clean Eenergy	8665 Hudson Blvd N Ste 110  Lake Elmo, MN 55042	Electronic Service	Yes	OFF_SL_19-408_19-408
Kate M	Heins	kate.heins@apexcleanenergy.com	Apex Clean Energy	310 4th St NE Ste 200  Charlottesville, VA 22902	Electronic Service	Yes	OFF_SL_19-408_19-408
Kari	Howe	kari.howe@state.mn.us	DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul, MN 55101	Electronic Service	No	OFF_SL_19-408_19-408
Dylan	Ikkala	dylan.ikkala@apexcleanenergy.com	Apex Clean Energy	8665 Hudson Blvd N Ste 110  Lake Elmo, MN 55042	Electronic Service	Yes	OFF_SL_19-408_19-408

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Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_19-408_19-408
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Kevin	Majjala	Kevin.Majjala@mnhs.org	Minnesota Historical Society	N/A	Electronic Service	No	OFF_SL_19-408_19-408
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Ronald C	Schirmer	ronald.schirmer@mnsu.edu	Department of Anthropology	359 Trafton Science Center N  Mankato, MN 56001	Electronic Service	No	OFF_SL_19-408_19-408

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Cynthia	Warzecha	cynthia.warzecha@state.m n.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, Minnesota 55155-4040	Electronic Service	No	OFF_SL_19-408_19-408

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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-486_19-486
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