

October 28, 2014

Dr. Burl Haar  
Minnesota Public Utilities Commission  
121 Seventh Place East  
Suite 350  
St. Paul MN 55101-2147

**Re: In the Matter of 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  
Docket No. IP6853 and IP6866/CN-11-471**

Dear Dr. Haar:

Enclosed please find the Petition to Extend Certificate of Need Without Recertification or Further Hearing or in the Alternative, to Request an Exemption from Certificate of Need Requirements that was e-filed today in the above referenced matters.

Please let me know if you have any questions or concerns regarding this filing.

Sincerely,

*/s/ Lindsey A. Hemly*

Lindsey A. Hemly  
*Attorney*  
**Direct Dial:** 612.492.7454  
**Email:** lhemly@fredlaw.com

Attorneys & Advisors  
main 612.492.7000  
fax 612.492.7077  
www.fredlaw.com

Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota  
55402-1425

**STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**In the Matter of 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**

**Docket No. IP6853 and IP6866/CN-11-471**

**PETITION TO EXTEND CERTIFICATE  
OF NEED WITHOUT  
RECERTIFICATION OR FURTHER  
HEARING OR IN THE ALTERNATIVE,  
TO REQUEST AN EXEMPTION FROM  
CERTIFICATE OF NEED  
REQUIREMENTS**

**INTRODUCTION**

On December 31, 2012, the Minnesota Public Utilities Commission (“Commission”) issued a joint Certificate of Need to Black Oak Wind, LLC (“Black Oak”) and Getty Wind Company, LLC (“Getty”) for the up to 82 MW Black Oak and Getty Wind Projects located in Stearns County, Minnesota (the “Projects”). As stated in the Certificate of Need, construction on the Projects was scheduled to begin in 2013, and the Projects were proposed to be in service by the end of 2013. While the Projects are not yet in commercial operation, Black Oak and Getty are in the final stages of Project development, with plans to commence construction prior to the end of 2014. Black Oak and Getty expect that the Projects will be placed in service near the end of 2015.

Pursuant to Minnesota Rule 7849.0400, subp. 2(H), changes to the size, type or timing of a proposed facility that do not conform to the provisions in subpart 2(A) – (G) require an applicant to notify the Commission of the proposed change and the reasons for the change. Upon such notification, the Commission is then required to evaluate the stated reasons for the change, and within 45 days of receipt of the request, notify the applicant whether the change is acceptable without recertification. The Commission must order additional 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.” Minnesota Rule 7849.0400, subp. 2(H) (emphasis added).

Because a 2015 in-service date for the Black Oak and Getty Projects extends beyond the one-year delay period set forth in Minnesota Rule 7849.0400, subp. 2(A), Black Oak and Getty request that the Commission review and approve an extension of the Projects’ in-service date to December 31, 2015 without rehearing or recertification. In the alternative, if the Commission determines that additional hearings are necessary, Black Oak and Getty request that the Commission find that Black Oak and Getty are exempt from the certificate of need requirements pursuant to the exemption provided under Minn. Stat. § 216B.243, subd. 9.

Finally, as noted in the Joint Application for Certificate of Need filed by Black Oak and Getty on October 11, 2011 (Docket No. IP6853 and IP6866/CN-11-471), the Black Oak and Getty

Projects have been jointly developed pursuant to an agreement whereby the two projects may come under common ownership at a future date. That agreement grants Geronimo Wind Energy, LLC d/b/a Geronimo Energy, LLC (“Geronimo”) an assignable option to acquire all of the membership interests in Getty. Black Oak is a wholly-owned subsidiary of Geronimo. In the near future, Geronimo intends to assign its option to Black Oak, and Black Oak will then acquire all of the membership interests in Getty. Upon Black Oak’s exercise of the option, Black Oak and Getty will provide notification of the transaction to the Commission.

### **REASONS FOR CHANGED IN-SERVICE DATE**

Over the past several years, multiple factors made it impracticable to achieve commercial operation in 2013 or 2014. Delays in obtaining a power purchase agreement and in the interconnection process have necessitated the requested revisions to the Black Oak and Getty project schedules.

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. While in September 2013, these negotiations resulted in an executed PPA with Minnesota Municipal Power Agency (“MMPA”) for the sale of energy from the Black Oak and Getty Projects, there was not enough time remaining in 2013 to construct the Projects and bring them in service prior to the end of the year.

Further, despite Black Oak and Getty’s success in obtaining a PPA in September 2013, 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.

Black Oak and Getty continue to advance the Projects through the MISO interconnection process. The System Impact Study (“SIS”) portion of the 2014 restudy is scheduled to be complete by the first of November 2014, and the Projects anticipate executing an amended GIA, including the latest restudy results, in December 2014.

### **ADDITIONAL HEARINGS ON THE CHANGE ARE NOT WARRANTED**

Minnesota Rule 7849.0400, subp. 2(H) provides “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.” Knowledge of the change in in-service date at the time of certificate of need issuance would not have reasonably resulted in the Commission reaching a different decision under the criteria set forth in Minnesota Rule 7849.0120.

First, a delayed in-service date does not reduce the adverse effect that denying the Projects would have on the adequacy, reliability and efficiency of the regional energy supply. Further, no more reasonable alternatives to the Projects exist. The Projects have negotiated a Wind Energy Purchase Agreement with the MMPA, under which 78 MW to be generated by the Black Oak and Getty Projects will be purchased by MMPA and used to meet MMPA’s RES compliance requirements under Minn. Stat. § 216B.1691. Project denial would deny MMPA the opportunity to purchase renewable, low-cost energy that will count toward satisfying its state renewable energy obligations and would result in the loss of a significant amount of electricity needed to satisfy state and regional demand.

Additionally, the Projects continue to present real benefits to society in a manner compatible with protecting natural and socioeconomic environments, including human health. Both Projects are in the final stages of their development processes and are quickly approaching the start to construction, which is anticipated to commence in late 2014. The Projects’ pre-construction compliance filings, required pursuant to the Projects’ Site Permits, document the steps the Projects have taken to minimize, and in many cases avoid, impacts to natural resources and the environment.

Finally, the Projects’ pre-construction compliance filings demonstrate the Projects’ compliance with the Site Permits and applicable federal, state, and local laws and regulations.

#### **ALTERNATIVE REQUEST THAT THE COMMISSION FIND THE BLACK OAK AND GETTY PROJECTS EXEMPT FROM CERTIFICATE OF NEED REQUIREMENTS**

In the alternative, Black Oak and Getty request that the Commission find that Black Oak and Getty are exempt from the certificate of need requirements pursuant to the exemption provided under Minn. Stat. § 216B.243, subd. 9. Minn. Stat. § 216B.243, subd. 9 provides:

**Subd. 9. Renewable energy standard facilities.** This section does not apply to a wind energy conversion system or a solar electric generation facility that is intended to be used to meet the obligations of section 216B.1691; provided that, after notice and comment, the commission determines that the facility is a reasonable and prudent approach to meeting a utility's obligations under that section. When making this determination, the commission must consider:

(1) the size of the facility relative to a utility's total need for renewable resources;

- (2) alternative approaches for supplying the renewable energy to be supplied by the proposed facility;
- (3) the facility's ability to promote economic development, as required under section 216B.1691, subdivision 9;
- (4) the facility's ability to maintain electric system reliability;
- (5) impacts on ratepayers; and
- (6) other criteria as the commission may determine are relevant.

Under this provision, a wind project that is intended to be used to meet a utility's RES obligations is exempt from obtaining a certificate of need, provided that the Commission determines that the facility is a reasonable and prudent approach for meeting that obligation. This section addresses each of the criteria that the Commission must consider when making an exemption determination under Minn. Stat. § 216B.243, subd. 9.

*1. Size of the Facility Relative to the Utility's Total Need for Renewables*

The Black Oak and Getty Projects will provide 78 MW of wind energy to MMPA in order to meet MMPA's RES obligations. As noted in MMPA's Application for Integrated Resource Plan Approval 2014-2028 ("IRP"), filed with the Commission on December 20, 2013 (Docket No. ET6133/RP-13-1165), MMPA has signed three wind PPAs, totaling 138 MW, and "[t]hese PPAs are expected to help MMPA meet [its] Renewable Energy Standard obligations by producing approximately 480,000 MWh of renewable energy annually." While not specifically identified in the public version of the filing, the Black Oak and Getty PPA is among the three PPA's noted in MMPA's IRP. Therefore, the 78 MW Projects are consistent with and will help MMPA in meeting its RES obligations.

*2. Alternative Approaches for Supplying Renewables*

MMPA evaluated multiple renewable projects in determining how best to meet its renewable energy needs, and MMPA ultimately selected, and its Board of Directors approved, the Black Oak and Getty PPA for that purpose. Black Oak and Getty assume that many if not all of the projects MMPA examined represented renewable "eligible energy technology" resources as defined by Minn. Stat. § 216B.1691, subd. 1 (a) and were potential alternatives for meeting the 78 MW of renewable energy to be supplied by Black Oak and Getty.

*3. Facility's Ability to Promote Economic Development*

The Projects will provide numerous economic benefits to the local community, both during construction and operation of the Projects. Project construction will require approximately 140 construction workers, which in turn, will spend an estimated \$175,000 in temporary living and entertainment expenses. It is anticipated that approximately \$4,000,000 will be spent locally (within 50 miles of the Projects) during the construction phase.

Further, during operations, the Projects will directly create 8 full-time jobs, paying an average of \$20-22/hour. Participating landowners will receive approximately \$375,000 per year, which amounts to approximately \$7,500,000 over 20 years. The Projects will generate \$320,000 in local tax revenue per year – \$255,000 will be distributed to Stearns County and a total of \$65,000 will be distributed to Getty, Raymond, Ashley and Sauk Centre Townships. Over 20 years, the Projects will generate approximately \$6,400,000 in local tax revenues. Finally, the Projects will directly benefit local communities through the creation of a community fund. The community fund will contribute approximately \$16,400 per year to local communities, totaling \$328,000 over 20 years. The anticipated direct payments to local governments, communities, and landowners are summarized in Table 1 below.

**Table 1: Community Economic Benefits**

<b>Community Economic Benefits</b>	<b>Annual</b>	<b>20-Year Total</b>
Tax Revenue (Co. & Twps.)	\$320,000	\$6,400,000
Community Fund	\$16,400	\$328,000
Total Landowner Group Revenue	\$375,000	\$7,500,000
<b>Total Direct Payments</b>	<b>\$711,400</b>	<b>\$14,228,000</b>

The benefits provided by the Black Oak and Getty Projects will diversify and strengthen the local economy.

4. *Facility’s Ability to Maintain Electric System Reliability*

The Projects’ interconnection is being studied by the Midcontinent Independent System Operator, Inc. (“MISO”) to allow for the Projects’ safe and reliable interconnection to the larger transmission grid. Project interconnection will continue to follow the MISO interconnection process, which will ensure that any necessary system upgrades will be completed and the energy produced by the Project will be reliably integrated.

5. *Impacts on Ratepayers*

MMPA’s rate-making authority is not subject to the regulatory jurisdiction of the Commission; rather, MMPA’s rates are governed by its Board of Directors. MMPA’s Board of Directors approved the Black Oak and Getty PPA. This indicates that MMPA’s Board of Directors found the Black Oak and Getty PPA to be a reasonable expenditure and found that using the 78 MW Black Oak and Getty Projects to meet its RES compliance obligation is reasonable and prudent.

6. *Other Relevant Criteria*

Black Oak and Getty are unaware of any additional criteria that the Commission has established for determining a Renewable Energy Standard Facility exemption. In any case, Black Oak and Getty are happy to provide any additional information that the Commission may request in support of such a determination.

## CONCLUSION

For the reasons set forth above, Black Oak and Getty respectfully request that the Commission change the in-service date specified in the certificate of need for the Projects to December 31, 2015 without recertification of or further hearing on the Projects. Due to the advanced stage of Project development, Black Oak and Getty further request that the Commission expeditiously consider this request for change, within the 45 days provided under Minn. R. 7849.0400, subp. 2(H).

In the alternative, if the Commission determines that additional hearings are necessary, Black Oak and Getty respectfully request that the Commission find that the Projects are exempt from Certificate of Need requirements.

Dated: October 28, 2014

Respectfully submitted,

/s/ *Lindsey A. Hemly*

Lindsey A. Hemly (# 0390347)

Christina K. Brusven (# 388226)

**FREDRIKSON & BYRON, P.A.**

200 South Sixth Street, Suite 4000

Minneapolis, MN 55402

Phone: (612) 492-7000

Fax: (612) 492-7077

**Attorneys for Black Oak Wind, LLC and Getty  
Wind Company, LLC**



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	No	OFF_SL_11-471_CN-11-471
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_11-471_CN-11-471
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_11-471_CN-11-471
Kate	Frantz	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_11-471_CN-11-471
Travis	Germundson	travis.germundson@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_11-471_CN-11-471
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_11-471_CN-11-471
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_11-471_CN-11-471
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500  St. Paul, MN 55101	Electronic Service	No	OFF_SL_11-471_CN-11-471
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_11-471_CN-11-471
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	No	OFF_SL_11-471_CN-11-471

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Susan	Medhaug	Susan.medhaug@state.mn.us	Department of Commerce	Suite 500, 85 Seventh Place East  St. Paul, MN 551012198	Electronic Service	No	OFF_SL_11-471_CN-11-471
Debra	Moynihan	debra.moynihan@state.mn.us	MN Department of Transportation	395 John Ireland Blvd MS 620  St. Paul, MN 55155-1899	Electronic Service	No	OFF_SL_11-471_CN-11-471
Bob	Patton	bob.patton@state.mn.us	MN Department of Agriculture	625 Robert St N  Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_11-471_CN-11-471
Michele	Ross	michele.ross@state.mn.us	Department of Health	625 N Robert St  Saint Paul, MN 55101	Electronic Service	No	OFF_SL_11-471_CN-11-471
Jennie	Ross	jennie.ross@state.mn.us	Minnesota Department of Transportation	395 John Ireland Boulevard, MS 620  St. Paul, MN 55155	Electronic Service	No	OFF_SL_11-471_CN-11-471
Jamie	Schrenzel	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_11-471_CN-11-471
Patrick	Smith	patrick@geronimowind.com	Geronimo Wind Energy, LLC	7650 Edinborough Way, Ste 725  Edina, MN 55435	Electronic Service	No	OFF_SL_11-471_CN-11-471