

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Sibley
Wind Substation, LLC for a Large Wind
Energy Conversion System in Sibley County

ISSUE DATE: May 12, 2015

DOCKET NO. IP-6666/WS-08-208

ORDER REQUIRING FURTHER
FILINGS

PROCEDURAL HISTORY

On September 23, 2008, the Commission issued a site permit to Sibley Wind Substation, LLC (Sibley) for a Large Wind Energy Conversion System of up to 20 megawatts in Sibley County.

On October 12, 2011, the Commission granted Sibley Wind Substation, LLC a permit amendment, which included extending the time period for commencing construction to two years from the date of the permit amendment.

On October 15 and 16, 2013, Cornish Township filed comments alleging that Sibley had violated terms and conditions of its site permit by modifying its road transportation plan in violation of its site permit, failing to establish a road agreement with the Township, and failing to update its storm water pollution prevention plan. On October 21, 2013, Sibley filed comments disputing claims that it was in violation of its site permit, stating that the Township had delegated authority to Sibley County to negotiate a road agreement and that it did not intend to use township roads; that it had complied with the road agreement; and that it was in compliance with its storm water and wetland permits.

On October 28, 2013, the Commission found that Sibley's preconstruction compliance filings were in compliance with the terms and conditions of its site permit.

Between October 2013 and November 2014, the Commission received additional comments from the public, from the Cornish Township Board, and from Representative Glenn Gruenhagen, alleging that Sibley had violated terms and conditions of its site permit, as well as applicable statutes and rules.

On November 21, 2014, the Commission issued a notice requesting comments on whether Sibley had materially violated any statutes or rules governing its site permit, or any permit terms and conditions. The notice also requested comments on possible remedies.

Between December 1 and the close of the reply comment period on December 15, 2014, the Commission received dozens of public comments, both in support of, and in opposition to, the project. Some comments recommended revoking the site permit, while others supported further project development. On December 15, 2014, Sibley filed comments stating why it believed it had not violated the terms and conditions of its permit.

On December 15, 2014, the Department of Commerce Energy Environmental Review and Analysis staff (EERA) filed comments stating that the record did not support a finding that Sibley had materially violated permit terms and conditions.

On February 13, 2015, the Commission received a letter from Senator Scott Newman requesting that a public hearing be held on the matter.

On April 9, 2015, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Permit Conditions, Statutes, and Rules

Sibley's site permit governs general construction conditions and mitigation measures. It contains terms and conditions governing: setbacks; preconstruction surveys; site layout restrictions; wake loss and noise studies; decommissioning, restoration, and abandonment requirements; reporting requirements; final construction requirements; the authority to construct; miscellaneous provisions, including failure to commence construction; the expiration date; and special conditions. The permit does not require Sibley to conduct avian and bat studies or to develop an avian and bat protection plan.

Minn. Stat. Chapter 216F governs the siting of wind energy conversion systems but does not set a specific deadline by which construction of an approved project must commence or be completed. Minn. R. 7854.1200 governs delays in construction and authorizes the Commission to consider revocation of a site permit if the permittee has not commenced construction of the project within two years after issuance of the site permit.

Minn. R. 7854.0100, subp. 4, defines construction and states that "construction means to begin or cause to begin a as part of a continuous program" activities such as installation of facilities or equipment.

Minn. Stat. § 216E.01, subd. 3, defines construction as "any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions."

II. Public Comments

The Commission received comments in favor of revoking the site permit, alleging that Sibley had violated the terms and conditions of its permit, as well as Minnesota statutes and rules governing the project.

They alleged the following: that Sibley had violated Minn. Stat. § 216B.1612, which governs community based energy development (C-BED) projects; that the permit had been transferred in violation of the site permit; that Sibley had failed to commence construction as required; that changes to the project were made without Commission approval in violation of the site permit; that Sibley had failed to comply with county and township requirements; that Sibley had failed to meet statutory permit update and submittal requirements; and that Sibley had violated a Cornish Township ordinance requiring environmental review prior to using county roads to transport large loads.

They stated that Sibley's ownership transfer violated the C-BED statute because ownership of the project had not remained in Minnesota. They also claimed that Sibley had transferred the permit without Commission approval, in violation of Section 3 K 6 of the site permit.

They argued that construction of the project had not diligently continued, resulting in a violation of Minn. R. 7854.1200 governing delays in construction.

They also claimed that Sibley had relocated access to turbine 6 in violation of condition 3 A 1 of the site permit because Sibley had not obtained Commission approval to make the adjustment. They also claimed that Sibley had failed to obtain necessary local, state, and federal permits, including permits required to cross streams or drainage ways, and a road access permit for use of Cornish Township roads.

In addition to comments alleging violations, the Commission also received comments in support of the project, which claimed that project development had been slowed by weather and by Sibley's decision to conduct an avian study, as requested by some residents. They also stated that Sibley had been responsive to questions and that the project would benefit the community.

III. Comments of Sibley

In its comments, Sibley addressed the concerns raised. In response to claims that it had violated the C-BED statute, Sibley stated that although the Commission initially found that the project qualified as a C-BED project, the power purchase agreement did not require C-BED status. Sibley also stated that it continues to own the project, that there have been no ownership changes in violation of the site permit, and that it addressed its change in ownership structure at its preconstruction meeting.

Sibley also addressed concerns about project construction and development, stating that its work on the project has included excavation for the following: for the substation, for the operation and maintenance facility, and for roads to approximately 40 percent of the wind turbine sites. Sibley stated that it has also begun electrical grid upgrades for the interconnection of the facility.

There were other factors, according to Sibley, that also affected project development. Adverse weather conditions in the winter months of 2013 and the spring months of 2014 slowed construction progress. Further, Sibley opted, in response to concerns from community members, to conduct an avian study, although this was not required by the site permit or any other applicable regulation. The avian study was completed in December 2014.

Sibley stated that it had made an adjustment to the location of the access road to wind turbine 6 to offset agricultural land, as requested by the property owner, but that this did not constitute a permit violation because the wind turbine itself was not moved. Further, Sibley stated that it had not failed to obtain local permits for the project; for example, the County does not require a permit to construct a drainage ditch crossing.

Sibley also stated that on March 12, 2012, Cornish Township approved a resolution authorizing the County to establish an agreement, on its behalf, with Sibley over the use of public rights-of-ways and roads. Sibley stated that the agreement is still in effect and that it is in compliance with the terms of the agreement. Sibley also stated that its permits with Sibley County are current, that it worked with the Pollution Control Agency to develop a storm water pollution prevention plan, that it has not received a bill from the County for environmental services, and that insurance certificates were approved by the County, in accordance with the road agreement.

Sibley further stated that it had conducted road testing, as required by its road agreement, to determine existing conditions of haul roads for the project and that the testing was conducted by a local engineering firm consistent with applicable engineering standards. Sibley stated that two road agreement amendments were passed by the County in May and September 2014 and that it expects that any necessary oversized and overweight permits required for road use will be issued by the County.

Further, Sibley stated that the Commission had concluded on October 28, 2013, that it was in compliance with the terms and conditions of its site permit.

Finally, Sibley stated that it had worked diligently to address concerns raised by members of the public, as demonstrated by its decision to conduct an avian study. During that process, Sibley worked with the Department of Natural Resources and the U.S. Fish and Wildlife Service to develop study methodologies and procedures.

IV. Comments of the EERA

The EERA addressed the claims made, including the following: that Sibley misrepresented its status as a C-BED project; that it transferred ownership of the permit in violation of its permit; that it failed to commence construction as required; that it made changes to the project without Commission approval; that it failed to comply with county and township requirements; and that it failed to meet statutory permit update and submittal requirements.

The EERA stated that C-BED status is relevant to consideration of power purchase agreements, but that it is not typically relevant, and was not relevant in this case, to the Commission's decision to issue a site permit.

Site permits generally require Commission approval of permit transfers that result in changes to the permittee. More recent site permits also require the permittee to notify the Commission of changes in ownership structure, such as changes in ownership of the permittee. According to the EERA, the permittee has not changed; Sibley continues to be the permittee. The EERA recommended, however, that Sibley be required to notify the Commission of any future changes in ownership structure of the permittee.

Regarding commencement of construction, the EERA stated that it is unclear what specific level of effort is needed to demonstrate timely commencement of construction and that it works to ensure that construction does not commence prematurely, such as prior to preconstruction meetings or before required documents are filed. Further, the EERA recognized that Sibley's decision to conduct an avian study, although not required by the permit, came in response to public input about potential avian impacts and that conducting the study, which was completed in December 2014, also prolonged project development.

In response to claims that Sibley violated its permit by moving access to turbine 6, the EERA reasoned that the adjustment did not require moving the turbine and that Sibley had therefore not violated section 3 A 1 of the site permit requiring notification to the Commission of changes in turbine locations.

The EERA also addressed claims that Sibley was in violation of section 3 B 8 because it had not obtained or complied with applicable permits required for the project and had failed to enter into an agreement with Cornish Township for use of township roads. The EERA stated that certain permits are not typically obtained until closer to construction of the work authorized by the permit and that there was no information showing that Sibley was not in compliance with required permits. The EERA also stated that it understood that Sibley will not be using township roads and that as a result, no permits for such use are required.

The EERA recommended that, while it was not aware of any changes in the status of local permits, Sibley be required to keep the Commission informed of the status of such permits.

Regarding claims that Sibley was in violation of a local environmental review ordinance, the EERA disputed that the township had the authority to conduct a separate environmental review and stated that it was unclear how Sibley had violated the ordinance. The EERA did, however, recommend that Sibley be required to develop an avian and bat protection plan to address the concerns raised about potential impacts to avian and bat species.

The EERA concluded that Sibley had not violated its site permit as alleged but did recommend that the Commission set additional requirements to increase clarity about project development going forward, particularly because Sibley's permit, including the 2011 permit amendment, is not as descriptive as more recently issued permits.

The EERA recommended that Sibley be required to: notify the Commission of any ownership changes going forward; develop an avian and bat protection plan to document work done and identify procedures to mitigate potential impacts to avian and bat species during construction and operation of the project; provide the Commission with an update of the status of project permits with Sibley County; and provide regular (monthly) construction status reports.

V. Commission Action

The Commission appreciates the comments filed and the input received. Although there is disagreement over Sibley's actions, it is clear that the concerns raised point to the need for further Commission action to increase clarity about the project's development and to ensure that the Commission will be more fully informed going forward. The Commission will therefore direct Sibley to take certain additional steps. These will include requiring Sibley to file

information about project ownership, the results of its avian study, and information on construction activities. Specifically, the Commission will require Sibley to do the following:

- File any changes in project ownership going forward;
- By May 15, file the final study/report of the results of the spring and fall 2014 avian surveys;
- By May 15, develop and file an avian and bat protection plan that documents the work done to date and that identifies procedures to mitigate potential impacts to avian and bat species during construction and operation of the project;
- By May 15, 2015, file an update on the status of project permits with Sibley County;
- File construction reports on a monthly basis beginning with issuance of this order; and
- By July 15, 2015, file a report that details the construction activities, and any other actions, conducted by or on behalf of Sibley between May 1, 2015 and July 1, 2015 to substantiate that construction has been continuous.

ORDER

1. Sibley shall file notice of any changes in project ownership going forward, including:
 - a. a change in owner(s) of the majority financial or governance interests in the permittee (if there are only co-equal 50/50 percent interests, any change is considered a change in majority interest);
 - b. a change in owner(s) of the majority interest financial or governance interest of the permittee's owners (if there are only co-equal 50/50 percent interests, any change is considered a change in majority interest); or
 - c. a sale which changes the parent entity of the permittee.
2. By May 15, 2015, Sibley shall file the results of the final study/report of the spring and fall 2014 avian surveys.
3. By May 15, 2015, Sibley shall develop and file an avian and bat protection plan to document the work done to date and that identifies procedures to mitigate potential impacts to avian and bat species during construction and operation of the project.
4. By May 15, 2015, Sibley shall file an update on the status of project permits with Sibley County.
5. Sibley shall file construction status reports on a monthly basis beginning with issuance of this order.

6. By July 15, 2015, Sibley shall file for approval a report that details the construction activities, and any other actions, conducted by or on behalf of Sibley, between May 1 and July 1, 2015 to substantiate that construction has been continuous.
7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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