



85 7TH PLACE EAST, SUITE 280
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1600 FAX: 651.539.1574
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May 10, 2017

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. IP6981/CN-17-306

Dear Mr. Wolf:

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

Notice Plan Petition for the Application of Dodge County Wind LLC for a Certificate of Need for the 200 MW Large Wind Energy Conversion System and an associated 345 kV Transmission Line in Dodge County, Minnesota.

The Petition was filed on behalf of Dodge County Wind LLC on April 20, 2017 by:

Brian M. Meloy
Stinson Leonard Street
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

The Department requests that DCW fully justify its request to forgo notice publication in a newspaper of general circulation throughout the state, as required by Minnesota Rules 7829.2500, subp. 5. The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ BEN KAMARA
Financial Analyst

BK/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. IP6981/CN-17-306

I. INTRODUCTION

On April 20, 2017, Dodge County Wind LLC (DCW or the Applicant) filed its Notice Plan Petition for the Application of Dodge County Wind LLC for a Certificate of Need for the 200-MW Large Wind Energy Conversion System and an associated 345-kilovolt (kV) Transmission Line in Dodge County, Minnesota (Notice Petition). The Notice Petition provides DCW's proposed notice plan to communicate its intent to construct a 345-kV generation-tie transmission line that delivers energy from a new substation associated with a proposed 200-MW Dodge County Wind Facility to the Southern Minnesota Municipal Power Agency's Byron Substation. According to DCW, a short portion of the 23-mile line will extend into Olmsted County. The Notice Petition includes a draft notice for landowners and residents, a draft notice for governmental entities, and a draft newspaper notice.

On April 24, 2017, DCW filed an Errata to the Notice Petition in order to insert the dates comments on the Notice Plan are due pursuant to Minnesota Rules 7829.2550, subp. 5 that the Applicant omitted in its original filing.

DCW also filed a *Petition for Exemption from Certain Certificate of Need Application Requirements* pertaining to a future Certificate of Need petition for the 200 MW Dodge County Wind facility. The exemption petition has been addressed in separate comments.

Below are the comments of the Minnesota Department of Commerce, Division of Energy Resources, Energy Regulation and Planning (Department) on the Notice Petition.

II. DEPARTMENT ANALYSIS

Minnesota Rules, part 7829.2550 state, in part:

Three months before filing a certificate of need application for a high-voltage transmission line as defined by Minnesota Statutes, section 216B.2421, the applicant shall file a proposed plan for providing notice to all persons reasonably likely to be affected by the proposed line.

Minnesota Statutes § 216B.2421 includes in its definition of a Large Energy Facility (LEF):

- (2) any high-voltage transmission line with a capacity of 200 kilovolts or more and greater than 1,500 feet in length;
- (3) any high-voltage transmission line with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota or that crosses a state line;

Given that the Dodge County Wind facility is expected to require a 345-kV generation-tie line approximately 23 miles long, this associated transmission line falls within the definition of “large energy facility” and, therefore, is considered a high-voltage transmission line for which a notice plan filing is required. The Department concludes that a notice plan is required regardless of whether a certificate of need for the associated transmission line is requested through a certificate of need application for a large generating plant (as an associated facility), or whether it is requested separately.

A. TYPES OF NOTICE

Minnesota Rules, part 7829.2550, subp. 3, requires types of notice as follows:

- direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed transmission line;
- direct mail notice to all mailing addresses within the area reasonably likely to be affected by the proposed transmission line;
- direct mail notice to tribal governments and to the governments of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the proposed transmission line; and
- newspaper notice to members of the public in areas reasonably likely to be affected by the proposed transmission line.

Regarding landowner notice, the Applicant proposed to provide notice to landowners in the Notice Area shown in Exhibit B of the petition. The potential routes within the Notice Plan are not identified. The Department notes that Minnesota Rules, part 7850.1000 specifies that a transmission line route may have a variable width of up to 1.25 miles within which a right-of-way can be located. Therefore, the Department recommends that the Commission

require DCW to provide direct mail notice to landowners within the Notice Area and within each proposed 1.25-mile wide proposed transmission line route.

DCW stated that it will obtain names and addresses from county tax assessment rolls record information. Regarding the notice to mailing addresses, the Applicant proposed to send a direct mail notice to every identified mailing address within Notice based on the mailing lists available from the U.S. Postal Service, from the records of County Auditors' offices and GIS data. The Department concludes that this is reasonable.

Regarding governmental notice, the Department reviewed the Applicant's list of government officials proposed to receive notice on Exhibit E of its Petition. The list includes a State Representative, a State Senator, 3 members of the US Congress and Local County, Township and City officials. The list appears to be complete, but should be expanded should additional local governments be included due to the 1.25-mile route requirement discussed above expand the Notice Area.

In regards to Tribal Government notification, the Applicant stated that, "There are no Tribe Governments within the Notice Area or nearby the Project."¹ . Regarding newspaper notice, the Applicants listed three local newspapers to the newspaper notice list. The Department concludes that the Applicants' proposed plan for newspaper notice is reasonable.

B. CONTENT OF NOTICE

Minnesota Rules, part 7829.2550, subp. 4 require the notices to provide the following information:

- a map showing the end points of the line and existing transmission facilities in the area;
- a description of general right-of-way requirements for a line of the size and voltage proposed and a statement that the applicant intends to acquire property rights for the right-of-way that the proposed line will require;
- a notice that the line cannot be constructed unless the Minnesota Public Utilities Commission (Commission) certifies that it is needed;
- the Commission's mailing address, telephone number, and Web site;
- if the applicant is a utility subject to chapter 7848, the address of the Web site on which the utility applicant will post or has posted its biennial transmission projects report required under that chapter;
- a statement that the Environmental Quality Board² will be preparing an environmental report on each high-voltage transmission line for which certification is requested;

¹ Petition, Page 3.

² The Department notes that while the statutes have changed regarding routing authority and location of the staff preparing the environmental report, the Commission's rules have not yet been updated to reflect these changes. See Docket No. E,ET,IP999/R-12-1246.

- a brief explanation of how to get on the mailing list for the Environmental Quality Board's proceeding; and
- a statement that requests for certification of high-voltage transmission lines are governed by Minnesota law, including specifically chapters 4410 and 7849, and Minnesota Statutes, section 216B.243.

The Department reviewed the attached notices, letters and maps provided by the Applicant and concludes that the Applicant's proposal for the resident/landowner notice, governmental notice, and newspaper notice generally contains the required information.

C. NOTICE TIMING

Minnesota Rules, part 7829.2550, subp. 6, requires the applicant to implement the Notice Plan within 30 days of its approval by the Commission. However, the Applicant requested that the Commission modify the "Notice Plan implementation requirement to allow for the notice to more closely coincide with the submittal of Certificate of Need application." DCW requested that the Commission direct the notices identified in the Notice Plan to occur within two to four weeks before the Certificate of Need (CN) filing. The Commission has ordered a similar approach, typically a 30-day window, in several dockets.³

Minnesota Rules, part 7829.3200 governs such variance requests and establishes the following criteria:

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.

The Department concludes that enforcement of the rule would burden all parties involved by separating the provision of notice from the start of the proceeding. Granting the variance would not adversely affect the public interest since the Applicant's proposal would more closely tie the implementation of the Notice Plan to the beginning of the CN proceeding. The Department is not aware that the variance would conflict with standards imposed by law. Therefore, the Department recommends that the Commission approve the Applicant's request to implement the Notice Plan within two to four weeks prior to the filing of the CN petition.

³ Examples include:

- November 3, 2006 in Docket No. E002, ET2, et al/CN-08-1115;
- November 29, 2007 in Docket No. E017, E015, ET6/CN-07-1222;
- November 12, 2008 in Docket No. E002/CN-08-992;
- January 26, 2010 in Docket No. E002/CN-09-1390; and
- August 17, 2010 in Docket No. E002/CN-10-694.
- February 4, 2013 in Docket No. E002/CN-12-1235
- December 8, 2014 in Docket No. E015/CN-14-787
- January 30, 2015 in Docket No. E015/CN-14-853

D. NEWSPAPER NOTIFICATION REQUIREMENTS

In addition to the notice provided pursuant to a Notice Plan, Minnesota Rules, part 7829.2500, subp. 5, requires the applicant to publish newspaper notice of the Certificate of Need filing in newspapers of general circulation throughout the state. The Applicant has requested a variance to this rule due to its request that the Applicant implement the Notice Plan no more than 60 days before the CN is filed,⁴ and based on the fact that the project will be located only in Dodge and a small portion of Olmstead counties. It appears that the Applicant is requesting a variance to Minnesota Rules, part 7829.2500, subp. 5 to both remove the requirement to publish notice in a newspaper of general circulation throughout the state and to remove the requirement to publish that notice at the time of the CN application.

In its filing, the Applicant indicated that it intends to publish a notice in the three local papers: Dodge County Independent, Dodge Center Star Herald and The Byron Review.⁵ As noted above, DCW has requested approval to implement the Notice Plan between 2 and 4 weeks prior to filing the CN application.⁶

The Department considers complete and thorough public notice to be crucial in ensuring that the public is aware of, can participate in, and affect the outcome of a CN proceeding. The Department requests that DCW provide support for its variance request to forego publishing notice in a newspaper of general circulation. Typically, large energy facilities have local impacts, yet the rule requires broad newspaper notice. It is not clear why the DCW project justifies only local newspaper notice.

However, should the Commission approve DCW's request to vary Minnesota Rules, part 7829.2550, subp. 6 resulting in Notice Plan implementation between 2 and 4 weeks prior to filing the CN application, the Department concludes that enforcement of Minnesota Rules 7829.2500, subp. 5 would impose a burden on the applicant by requiring duplicative notice. Further, granting a variance to Minnesota Rules 7829.2500, subp. 5 would not adversely affect the public interest because timely newspaper notice will be provided. Finally, the Department is not aware that the variance would conflict with standards imposed by law.

⁴ Petition, page 4.

⁵ Petition, page 3.

⁶ Petition, page 4.

III. DEPARTMENT RECOMMENDATIONS

The Department requests that DCW fully justify its request to forgo notice publication in a newspaper of general circulation throughout the state, as required by Minnesota Rules 7829.2500, subp. 5.

Upon receiving such justification, the Department expects to recommend that the Commission approve the Applicant's proposed Notice Plan, with the clarification that the Notice Area will encompass the entire width of DCW's proposed route alternatives.

Further, the Department recommends that the Commission grant the Applicants a variance to Minnesota Rules 7829.2550, subp. 6 to allow implementation of the Notice Plan within 2 to 4 weeks prior to the filing of the CN petition.

/lt

CERTIFICATE OF SERVICE

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

**Minnesota Department of Commerce
Comments**

Docket No. IP6981/CN-17-306

Dated this 10th day of May 2017

/s/Sharon Ferguson

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	Yes	OFF_SL_17-306_CN-17-306
Michelle F.	Bissonnette	michelle.bissonnette@hdrinc.com	HDR Engineering, Inc.	Golden Hills Office Center 701 Xenia Ave S Ste 600 Minneapolis, MN 55416	Electronic Service	No	OFF_SL_17-306_CN-17-306
B. Andrew	Brown	brown.andrew@dorsey.com	Dorsey & Whitney LLP	Suite 1500 50 South Sixth Street Minneapolis, MN 554021498	Electronic Service	No	OFF_SL_17-306_CN-17-306
Bill	Cook	bcook@rpu.org	Rochester Public Utilities	4000 East River Road NE Rochester, MN 55906	Electronic Service	No	OFF_SL_17-306_CN-17-306
John	Crane	johncranefishing@gmail.com	Fishing	1250 Wee Gwaus DR SW Bemidji, MN 56601	Electronic Service	No	OFF_SL_17-306_CN-17-306
George	Crocker	gwillc@nawo.org	North American Water Office	PO Box 174 Lake Elmo, MN 55042	Electronic Service	No	OFF_SL_17-306_CN-17-306
Thomas	Davis	N/A	-	1161 50th Ave Sherburn, MN 56171	Paper Service	No	OFF_SL_17-306_CN-17-306
Ian	Dobson	Residential.Utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_17-306_CN-17-306
John E.	Drawz	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_17-306_CN-17-306
Cory	Dutcher	cory.dutcher@ge.com	GE Power and Water	1 River Rd. Bldg. 37-413 Schenectady, NY 12345	Electronic Service	No	OFF_SL_17-306_CN-17-306

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kristen	Eide Tollefson	N/A	R-CURE	28477 N Lake Ave Frontenac, MN 55026-1044	Paper Service	No	OFF_SL_17-306_CN-17-306
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_17-306_CN-17-306
Emma	Fazio	emma.fazio@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-306_CN-17-306
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_17-306_CN-17-306
Annette	Fiedler	phydev@swrdc.org	Southwest Regional Development Comm.	2401 Broadway Ave Ste 1 Slayton, MN 56172	Electronic Service	No	OFF_SL_17-306_CN-17-306
Karen A	Gebhardt	kageb1@gvtel.com		43901 253rd Ave Leonard, MN 56652-4026	Electronic Service	No	OFF_SL_17-306_CN-17-306
Travis	Germundson	travis.germundson@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_17-306_CN-17-306
Jason	Harris	Jason.Harris@nee.com	Dodge County Wind, LLC	700 Universe Blvd Juno Beach, FL 33408	Electronic Service	No	OFF_SL_17-306_CN-17-306
Charles	Healy	chuckh@electrotech-inc.com	ElectroTech, Inc	7101 Madison Ave Minneapolis, MN 55427	Electronic Service	No	OFF_SL_17-306_CN-17-306
Valerie	Herring	vherring@briggs.com	Briggs and Morgan, P.A.	2200 IDS Center 80 S. Eighth Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-306_CN-17-306

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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_17-306_CN-17-306
Scott	Johnson	Scott.Johnson@ci.medina.mn.us	City of Medina	2052 County Road 24 Medina, MN 55340-9790	Electronic Service	No	OFF_SL_17-306_CN-17-306
Bruce	King	bruce@ranww.org	Realtors, Association of Northwestern WI	Suite 3 1903 Keith Street Eau Claire, WI 54701	Electronic Service	No	OFF_SL_17-306_CN-17-306
Stacy	Kotch	Stacy.Kotch@state.mn.us	MINNESOTA DEPARTMENT OF TRANSPORTATION	395 John Ireland Blvd. St. Paul, MN 55155	Electronic Service	No	OFF_SL_17-306_CN-17-306
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_17-306_CN-17-306
Kim	Lindquist	kim.lindquist@ci.rosemount.mn.us		2875 145th St W Rosemount, MN 55068	Electronic Service	No	OFF_SL_17-306_CN-17-306
Paula	Maccabee	Pmaccabee@justchangela.com	Just Change Law Offices	1961 Selby Ave Saint Paul, MN 55104	Electronic Service	No	OFF_SL_17-306_CN-17-306
Brian	Meloy	brian.meloy@stinson.com	Stinson, Leonard, Street LLP	150 S 5th St Ste 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-306_CN-17-306
Kevin	Mixon	kevin.mixon@state.mn.us	Department of Natural Resources	261 HWY 15 S New Ulm, MN 56073	Electronic Service	No	OFF_SL_17-306_CN-17-306
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-306_CN-17-306

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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_17-306_CN-17-306
Colleen	Mueller	N/A		22186 State Hwy 4 Paynesville, MN 56362	Paper Service	No	OFF_SL_17-306_CN-17-306
Brian J	Murphy	Brian.J.Murphy@nee.com	Nextera Energy Resources, LLC	700 Universe Blvd Juno Beach, FL 33408	Electronic Service	No	OFF_SL_17-306_CN-17-306
Steven	Nyhus	swnyhus@flaherty-hood.com	Flaherty & Hood PA	525 Park St Ste 470 Saint Paul, MN 55103	Electronic Service	No	OFF_SL_17-306_CN-17-306
Carol A.	Overland	overland@legalectric.org	Legalelectric - Overland Law Office	1110 West Avenue Red Wing, MN 55066	Electronic Service	No	OFF_SL_17-306_CN-17-306
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_17-306_CN-17-306
Kevin	Peterson	kjp@ibew160.org	IBEW Local 160	1109 Northway Lane NE Rochester, MN 55906	Electronic Service	No	OFF_SL_17-306_CN-17-306
Angela	Piner	angela.piner@hdrinc.com	HDR, Inc.	Suite 600 701 Xenia Avenue South Suite 600 Minneapolis, MN 55416	Electronic Service	No	OFF_SL_17-306_CN-17-306
Larry	Rebman	larryemls@hotmail.com	EMLS, Inc	PO Box 122 Appleton, MN 56208	Electronic Service	No	OFF_SL_17-306_CN-17-306

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Margaret	Rheude	Margaret_Rheude@fws.gov	U.S. Fish and Wildlife Service	Twin Cities Ecological Services Field Office 4101 American Blvd. E. Bloomington, MN 55425	Electronic Service	No	OFF_SL_17-306_CN-17-306
Tom	Schmitz	tschmitz_rph@yahoo.com		N/A	Electronic Service	No	OFF_SL_17-306_CN-17-306
Rachelle	Schmitz	rrneevel@yahoo.com		N/A	Electronic Service	No	OFF_SL_17-306_CN-17-306
Jamie	Schrenzel	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Saint Paul, MN 55155	Electronic Service	No	OFF_SL_17-306_CN-17-306
Rod	Schumacher	rod.schumacher@is-grp.com	I&S Group	115 E Hickry St Suite 300 Mankato, MN 56001	Electronic Service	No	OFF_SL_17-306_CN-17-306
David	Shaffer	david.shaffer@startribune.com		425 Portland Minneapolis, MN 55488	Electronic Service	No	OFF_SL_17-306_CN-17-306
Tom	Slukich	tom@nationalconductor.com	National Conductor Constructors	18119 Hwy 371 North Brainterd, MN 56401	Electronic Service	No	OFF_SL_17-306_CN-17-306
Adam	Sokolski	adam.sokolski@iberdrolaren.com	Iberdrola Renewables	701 fourth Avenue South Suite 1010 Minneapolis, MN 55415	Electronic Service	No	OFF_SL_17-306_CN-17-306
Matt	Steinrueck	BADEMAIL-msteinrueck@cleanwater.org	Clean Water Action	330 Second Ave S Suite 420 Minneapolis, MN 55401	Paper Service	No	OFF_SL_17-306_CN-17-306
Mark	Strohfus	mstrohfus@greenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 553694718	Electronic Service	No	OFF_SL_17-306_CN-17-306

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Carl	Strohm	cjsmg@sbcglobal.net	SBC Global	105 East Edgewood Ave Indianapolis, IN 46227	Electronic Service	No	OFF_SL_17-306_CN-17-306
Tom	Swafford	tswafford@umsi.us	Utility Mapping Services, Inc	3947 E Calvary Rd Suite 103 Duluth, MN 55803	Electronic Service	No	OFF_SL_17-306_CN-17-306
Eric	Swanson	eswanson@winthrop.com	Winthrop Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_17-306_CN-17-306
Todd	Tadych	ttadych@atcllc.com	American Transmission Company LLC	5303 Fen Oak Dr Madison, WI 53718	Electronic Service	No	OFF_SL_17-306_CN-17-306
Steve	Thompson	stevet@cmpasgroup.org	Central Minnesota Municipal Power Agency	459 S Grove St Blue Earth, MN 56013-2629	Electronic Service	No	OFF_SL_17-306_CN-17-306
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_17-306_CN-17-306
Brian	Zelenak	brian.r.zelenak@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 55401-1993	Electronic Service	No	OFF_SL_17-306_CN-17-306
Hans	van Lingen	hans.vanlingen@enel.com	Enel Green Power North America	1 Tech Drive Suite 220 Andover, MA 01810	Electronic Service	No	OFF_SL_17-306_CN-17-306