

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of Pleasant Valley Wind LLC for a Certificate of Need for up to 301 MW at the Pleasant Valley Project in Dodge and Mower Counties in Southeastern Minnesota

ISSUE DATE: October 27, 2010

DOCKET NO. IP-6828/CN-09-937

ORDER GRANTING A CERTIFICATE OF NEED

PROCEDURAL HISTORY

On October 8, 2009, the Commission issued an Order granting Pleasant Valley Wind LLC (Pleasant Valley or the Applicant) an exemption from some of the information requirements under Minn. Rules, Chapter 7849. The exemptions are the same or similar to those requested (and granted) by independent power producers proposing wind generation projects.

On October 27, 2009, Pleasant Valley filed an application for a certificate of need.

On November 25, 2009, the Office of Energy Security (the OES) filed comments on the completeness of the application.

On December 4, 2009 Pleasant Valley filed comments and provided supplemental information in response to the OES.

On December 8, 2009, the OES filed a letter supporting accepting the application as complete. Pleasant Valley is proposing a 300 megawatt (MW) large electric generation facility in Dodge and Mower Counties in Southeastern Minnesota. The proposal is known as the Pleasant Valley Wind Project.

On December 23, 2009 the Commission issued an ORDER ACCEPTING APPLICATION AS COMPLETE, AUTHORIZING INFORMAL REVIEW PROCESS. The Order found the application complete as of December 4, 2009. The Commission also issued a Notice Soliciting Comments on the merits of the application. The dates established in the notice were February 12, 2010 for initial comments and March 12, 2010 for reply comments.

On February 12, 2010, the OES filed comments on the merits of the Pleasant Valley project. The OES recommended approval of the application, but requested that the Applicant file additional information regarding the consideration of distributed generation.

On March 12, 2010, Olmstead Wind Truth filed comments on the merits of the project and a petition for a contested case.

On April 1, 2010, Pleasant Valley filed comments in response to Olmstead Wind Truth's comments and request for a contested case.

On April 23, 2010, the Commission issued an ORDER DENYING REQUEST FOR A CONTESTED CASE PROCEEDING.

On June 23, 2010, the Energy Facilities Permitting Unit of the OES issued an Environmental Report on the Pleasant Valley Wind Project.

On July 1, 2010, a public hearing on the Pleasant Valley Wind Project and associated facilities was held at the Austin High School Cafeteria in Austin, Minnesota.

On July 30, 2010, Pleasant Valley filed a letter updating information regarding the turbine technologies being considered in the development of the Pleasant Valley Wind Project. In the letter, Pleasant Valley indicated that because of the turbine sizes being considered it was requesting approval for up to 301 MW of nominal capacity, as opposed to up to 300 MW as described in its original application.

On August 3, 2010 Administrative Law Judge Manuel Cervantes filed his Summary of Public Testimony.

The Commission met on October 21, 2010 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Proposed Project

Pleasant Valley has proposed to build a wind generation facility of up to 301 MW in Dodge and Mower Counties in southeastern Minnesota, near the City of Austin. Specifically, the project is proposed to be located in Hayfield and Vernon Townships of Dodge County and Dexter, Pleasant Valley, Red Rock, Sergeant and Waltham Townships in Mower County.

The project and associated facilities include up to an estimated 188, 1.6 MW wind turbines (or as few as 130, 2.3 MW turbines), access roads, an underground electrical collection system, an operation and maintenance building, meteorological towers and a new project substation. Power from the project substation will be transmitted via an overhead 138 kV transmission line to the Pleasant Valley substation with a short extension at 345 kV to the existing Xcel 345 kV line.

Pleasant Valley stated that it anticipates beginning construction during the summer of 2011 with a proposed in-service date of Fall 2012.

II. The Legal Standard for a Certificate of Need

A. The Initial Certificate of Need Statutory Factors

As initially enacted, the Certificate of Need statute identified eight factors for the Commission to consider in evaluating the need for a proposed large energy facility¹ and directed the Commission to "adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to this section."²

The statute also prohibited the Commission from granting any Certificate of Need unless the applicant demonstrated that the need for electricity cannot be met more cost effectively through energy conservation and load-management measures.³

B. The Commission's Rules Regarding Certificates of Need

In 1983, the Commission adopted the Certificate of Need rules, Minn. Rules Chapter 7849. One of those rules, Minn. Rules, Part 7849.0120, addressed the eight factors identified in the statute and provided for the Commission to issue a Certificate of Need when the applicant demonstrates four things:

(A) that the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states...;

(B) that a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record...;

(C) that a preponderance of the evidence on the record shows that the proposed facility or a suitable modification of the facility will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health...; and

(D) that the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

C. Additional Statutory Requirements

Subsequent to the adoption of the rules, the Legislature amended the statute to direct the Commission to consider four more factors when assessing need:

¹ Minn. Stat. § 216B.243, subd. 3.

² Minn. Stat. § 216B.243, subd. 1.

³ Minn. Stat. § 216B.243, subd. 3.

(9) with respect to a high-voltage transmission line, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of the transmission system or lower costs for electric consumers in Minnesota;

(10) whether the applicant or applicants are in compliance with applicable provisions of sections 216B.1691 and 216B.2425, subdivision 7, and have filed or will file by a date certain an application for certificate of need under this section or for certification as a priority electric transmission project under section 216B.2425 for any transmission facilities or upgrades identified under section 216B.2425, subdivision 7;

(11) whether the applicant has made the demonstrations required under subdivision 3a;⁴ and

(12) if the applicant is proposing a nonrenewable generating plant, the applicant's assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs associated with that risk.

The statute was further amended to prohibit the Commission from granting a Certificate of Need for any large energy facility that transmits electric power generated by means of a nonrenewable energy source unless the applicant demonstrates that it has explored using renewable resources and that the total costs of the project it proposes, including environmental costs, are lower than the cost of using renewables.⁵

III. The OES's Comments and Environmental Report

A. OES Comments on Merits of Pleasant Valley's Request for a Certificate of Need

In its comments filed February 12, 2010, the OES examined the Applicant's application for a Certificate of Need with respect to criteria established in statute and rule and explained why it believed the Applicant's application met those criteria. An itemization of the criteria addressed and the OES's recommendations regarding them follows:

⁴ Minn. Stat. § 216B.243, subd. 3a: Use of renewable resource. The commission may not issue a certificate of need under this section for a large energy facility that generates electric power by means of a nonrenewable energy source, or that transmits electric power generated by means of a nonrenewable energy source, unless the applicant for the certificate has demonstrated to the commission's satisfaction that it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source. For purposes of this subdivision, "renewable energy source" includes hydro, wind, solar, and geothermal energy and the use of trees or other vegetation as fuel. [Emphasis added.]

⁵ Minn. Stat. § 216B.243, subd. 3a.

Statutory Criteria: Minn. Stat. § 216B.243	Where addressed in the OES's February 10, 2010 Comments	OES's Statement
Minn. Stat. §216B.243, subd. 3 (9)	Attachment 1, page 3.	Not applicable.
Minn. Stat. §216B.243, subd.3a, and §216B.2422, subd. 4	Section II, B, 2 Page 8	Minnesota Statutes indicate a clear preference for renewable facilities. The proposed project meets that preference.
Minn. Stat. §216B.2426	Section II, C, 3 Pages 10-11	...the OES concludes that a potential buyer of the proposed Project's output would consider all resources available, including distributed generation. The OES concludes that the requirement to consider distributed generation has been met.
Minn. Stat. §216B.1694, subd.2 (a) (5)	Section II, C, 4 Page 11	This statute does not apply since the proposed facility is not a fossil-fuel-fired generation facility.
Minn. Stat. §216B.243 subd. 3 (10) and §216B.1691	Section II, E, 3 Page 13	Given that the Pleasant Valley has no retail customers in Minnesota, the OES concludes that this statute does not apply.
Minn. Stat. §216B.243, subd.3 (12)	Section II, E, 4 Page 13	In this case, the Pleasant Valley is proposing a renewable generation facility. Therefore, this statute does not apply.
Minn. Stat. §216B.243, subd. 3 (10) and §216B.2425, subd. 7	Section II, E, 5 Page 14	Since Minnesota Statutes, section 216B.2425 is applicable only to entities that own or operate electric transmission lines in Minnesota, it does not appear that this statute applies in this proceeding.
Minn. Stat. §216B.243 subd. 3 and § 216B.243, subd. 3 (8)	Section II, B, 3 Pages 8	The Commission's October 8, 2009 Order exempted Pleasant Valley from providing information on conservation programs and the potential for reducing the need for this generation project because Pleasant Valley does not operate any conservation programs.
Minn. Stat. § 216H.03	Section II,E,6 Page 15	The OES concludes that the proposed Project (a wind facility) will not contribute to statewide power sector carbon dioxide emissions.

In addition, OES addressed the criteria established in Minn. Rules, part 7849.0120, which reiterate the criteria established in Minn. Stat. § 216B.243, subdivision 3(1) - (8).

Regulatory Criteria: Minn. Rules, Part 7849.0120	Where Addressed in the OES's February 10, 2010 Comments	The OES's Statement
Subpart A(1)	Section II, A, 1, a Pages 3-4	The OES concludes that Pleasant Valley's forecasted need for the renewable energy expected to be produced by the Pleasant Valley Project is reasonable.
Subpart A (2)	Section II, B, 3 Page 8	The Commission's October 8, 2009 Order exempted Pleasant Valley from providing information on conservation programs and the potential for reducing the need for this generation project because Pleasant Valley does not operate any conservation programs.
Subpart A (3)	Section II, E, 2 Pages 12-13	In its October 8, 2009 Order, the Commission granted Pleasant Valley an exemption to Minnesota Rules, part 7849.0240, subp. 2 (B) which calls for the Applicant to provide a summary of the promotional practices that may have given rise to the demand for the facility. The exemption was granted because Pleasant Valley does not have captive retail customers and there is no authorized rate of return to consider.
Subpart A (4)	Section II, C, 1, a Pages 8-9	Therefore, the OES concludes that a facility not requiring a Certificate of Need is not more reasonable than the Proposed Project
Subpart A (5)	Section II, D Page 11	The OES relies on its Environmental Report (ER) for its socioeconomic analysis in a CN proceeding. As of the date of the submission of these comments, the ER is not yet complete. Therefore, the OES recommends that the Commission consider the ER that will be filed by the Energy Facilities Permitting Staff of the OES in the Commission's decision in this matter.
Subpart B (1)	Section II, B, 1 (a-c) Pages 5-7	Based on this information and on the discussion above regarding forecasted renewable energy needs, the OES concludes that the proposed Project's size is not excessive and therefore is reasonable. (page 6) The OES notes that, generally, an independent power producer has an incentive to ensure recovery of its investment. Given this factor, along with the preference for renewable, noncarbon energy resource in Minnesota Statutes, the OES concludes that the proposed Project type is reasonable. (page 6) Therefore, the OES concludes that these factors that are relevant to the wind generation industry as well as the proposed Project specifically support the timing of the proposed Project. (page 7)

Subpart B (2)	Section II, C, 1, b Page 9	. . . since pricing in the MISO market is based on the last (marginal) resource, electricity produced by wind facilities is not likely to have a significant effect on wholesale prices.
Subpart B (3)	Section II, C, 1, c Pages 9-10	The proposed facility will have relatively minor impacts on the natural and socioeconomic environments. Therefore, consideration of the effects on the natural and socioeconomic environments using the Commission's approved externality values would not significantly impact the overall cost analysis. Further, as no reasonable alternatives to the proposed Project have been identified, comparing the effects of this Project with another wind project of this size is not likely to result in significant differences. Therefore, the OES concludes that this subcriterion has been met.
Subpart B (4)	Section II, C, 2 Page 10	Therefore, the OES concludes that this sub-criterion has been met.
Subpart C(1)	Section II, A,1,b Page 5	As discussed in the previous paragraph, this Project would help Minnesota meet its energy needs while supporting the state's renewable energy policy. The OES concludes that this Project fits the state's overall energy needs.
Subpart C (2)	Section II, D Page 11	The OES relies on its Environmental Report (ER) for its socioeconomic analysis in a CN proceeding. As of the date of the submission of these comments, the ER is not yet complete. Therefore, the OES recommends that the Commission consider the ER that will be filed by the Energy Facilities Permitting Staff of the OES in the Commission's decision in this matter. See OES Environmental Report.
Subpart C (3)	Section II, D Page 11	The OES relies on its Environmental Report for its socioeconomic analysis. See OES Environmental Report.
Subpart C (4)	Section II, D Page 11	The OES relies on its Environmental Report for its socioeconomic analysis. See OES Environmental Report.
Subpart D	Section II, E, 1 Page 12	The OES concludes that the record at this time does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, would fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

Based on its review, the OES recommended that the Commission approve Pleasant Valley's application for a Certificate of Need.

B. The OES's Environmental Report

On March 25, 2010, the Department issued a decision (Scoping Decision) pursuant to Minn. Rules, part 7849.1400. subpart 7, determining the scope of the Environmental Report to be prepared by OES on Pleasant Valley's proposed project. A copy of the OES's Scoping Decision is attached to the OES's Environmental Report as Appendix A.

On June 23, 2010, in response to the Scoping Decision, OES filed an Environmental Report comparing the effect proposed project's effect on humans and the environment to the effects of likely alternatives.

Because the proposed Project is intended to produce renewable energy in furtherance of Minnesota's renewable energy standard (Minn. Stat. § 216B.1691), alternatives examined in this ER are limited to renewable energy sources consistent with the Commission's order, dated October 8, 2009. These alternatives include: (1) a generic 300 MW wind generation Project sited elsewhere in Minnesota, (2) a 124.5 MW biomass plant, (3) a "no build" alternative, and (4) alternative renewable technologies.

Section 2 of this ER outlines the regulatory framework governing the Project. Section 3 describes the proposed Project. Section 4 describes alternatives to the Project and their feasibility and availability. Section 5 describes the potential impacts of the no build alternative. Section 6 discusses the potential human and environmental impacts of the Project and alternatives, including possible mitigations. Section 7 describes the additional permits that may be required for this Project.

IV. Olmstead Wind Truth's Comments

On February 12, 2010 when it filed its request for a contested case hearing, Olmstead Wind Truth filed comments on the merits of Pleasant Valley's application for a Certificate of Need. Olmstead Wind Truth identified several concerns and issues not based in conflicting facts, but relating to whether the facts presented by the Applicant adequately support an ultimate conclusion by the Commission that the Applicant has borne its burden to show that the energy to be produced by the project is needed.

Consequently, on March 12, 2010, the Commission denied Olmstead Wind Truth's request for a contested case hearing finding that Olmstead Wind Truth did not need a contested case proceeding to make those arguments to the Commission when the process reaches that stage, i.e., after the Environmental Report on the project has been issued and public hearing in the area of the project has been held.⁶

Subsequently, Pleasant Valley filed comments on April 1, 2010, responding to the objections raised by Olmstead Wind Truth in its February 12, 2010 comments. In summary, Pleasant Valley stated that the Application demonstrated that the residents of Minnesota, neighboring states and the region would be adversely impacted if the Certificate of Need is denied. In response to

⁶ *In the Matter of Pleasant Valley Wind, LLC Application for a Certificate of Need and a Large Wind Energy Conversion System Site Permit*, Docket No. IP-6828/CN-09-937, ORDER DENYING REQUEST FOR A CONTESTED CASE PROCEEDING (April 23, 2010) at page 2.

the alternatives discussed in Olmstead Wind Truth's comments, the Applicant argued that the standards for evaluating a certificate of need suggested by Olmstead Wind Truth are unworkable and contrary to law.

At the October 21, 2010 hearing before the Commission on this matter, Olmstead Wind Truth did not appear objecting to granting Pleasant Valley the requested Certificate of Need.

For further discussion of the merits of Pleasant Valley's application, see below at Section V. B.

V. The Commission's Analysis and Action

A. The OES's Environmental Report

Minn. Rules, part 7849.1800, subpart 2, requires the Commission must determine, at the time it makes a final decision on a Certificate of Need application, whether the Environmental Report and the record created in the matter address the issues identified in the Scoping Decision issued pursuant to Minnesota Rules, part 7849.1400, subpart 7.

Having reviewed the Environmental Report issued by the OES on June 22, 2010, the Commission finds that it and the record as a whole do in fact adequately address the Certificate of Need issues identified in the Commissioner's scoping decision.

B. Pleasant Valley's Request for a Certificate of Need

The Commission, having taken into consideration all the factors identified in statute and rule, finds that the Pleasant Valley has proved the need for its proposed large energy facility in Dodge and Mower Counties. By the end of the process, no party opposed granting the Certificate of Need to Pleasant Valley and the OES recommended, after a thorough analysis, that the Commission should grant it. As shown above, OES based its recommendation on its examination of the relevant statutory and regulatory criteria.

Having reviewed OES's comments and the record in this matter, the Commission will accept the OES's findings. Based on those findings, augmented by OES's Environmental Report and the record as a whole, the Commission makes findings on these four points.

First, based on a consideration of the factors set forth at Minn. Rules, part 7849.0120, A, the Commission concludes that denial of the Applicant's petition would likely harm the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states.

Second, based on a consideration of the factors set forth at Minn. Rules, part 7849.0120, B, the Commission concludes that a more reasonable and prudent alternative to the Applicant's proposed facility has not been demonstrated by a preponderance of the evidence on the record.

Third, based on a consideration of the factors set forth at Minn. Rules, part 7849.0120,C, the Commission concludes that the preponderance of the evidence on the record indicates that the Applicant's proposed facility will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health.

Fourth, the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments. Minn. Rules, part 7849.0120,D.

ORDER

1. The Commission confirms that the Environmental Report prepared by the OES and filed with the Commission on June 23, 2010 and the record created in this matter, adequately address the issues identified in the OES's scoping decision of March 25, 2010.
2. The Commission hereby grants Pleasant Valley Wind LLC a Certificate of Need for its proposed wind facility of up to 301 megawatt (MW) in Dodge and Mower Counties.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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