

September 27, 2019

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. IP-6981/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:

In the Matter of the Application of Dodge County Wind, LLC for a Certificate of Need, a Site Permit, and a Route Permit for the 170 MW Dodge County Wind Project and Associated 354 kV High-Voltage Transmission Line in Dodge, Steele, and Olmsted counties, Minnesota.

On September 13, 2019, the Minnesota Public Utilities Commission (Commission) issued a *Notice of Comment Period* requesting comments on a number of procedural issues. The Department provides the attached comments on the procedural issues related to the Certificate of Need.

The Department recommends that the Minnesota Public Utilities Commission (Commission) **suspend the Certificate of Need process until the Applicant files a revised application, including information regarding the associated facilities needed to interconnect the Project to the transmission system, in conformance with Minnesota Rules, parts 7849.0240, 7849.0250, and 7849.0270 to 7849.0340, and the Commission's July 7, 2017 Exemption Order.** The Department is available to respond to any questions the Commission may have on this matter.

Sincerely,

/s/ MICHAEL N. ZAJICEK  
Rate Analyst

MNZ/ar  
Attachment



## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. IP-6981/CN-17-306

#### I. BACKGROUND

On June 29, 2018, Dodge County Wind, LLC (DCW or the Applicant) filed an application for a Certificate of Need (CN) for the Dodge County Wind Project and associated 23-mile 354-kV high-voltage transmission line to be located in Dodge, Steele, and Olmsted counties, Minnesota (Project).

On November 1, 2018, the Minnesota Public Utilities Commission (Commission) ordered that the CN, site permit, and route permit applications be referred to the Office of Administrative Hearings for contested case proceedings.

On March 1, 2019, DCW filed direct testimony in the contested case proceedings.

On July 22, 2019, the Laborers District Council of Minnesota and North Dakota (LIUNA) filed a *Motion to Compel Discovery from Dodge County Wind, LLC and to Extend Deadlines for Submission of Pre-Filed Testimony*.

On August 6, 2019, intervening parties filed direct testimony.

On August 7, 2019, the Administrative Law Judge (ALJ) denied LIUNA's motion to compel and extend deadlines.

On August 14, 2019, DCW filed a request to withdraw its application for a route permit and a motion to suspend the procedural schedule.

On August 21, 2019, LIUNA filed a motion requesting that the ALJ's decision to deny its motion to compel be certified to the Commission for review.

On August 29, 2019, the Commission filed a *Notice of Request for Certification of Dodge County Wind Cases* to enable the Commission to resolve outstanding issues due to the procedural complexities of the case.

On August 30, 2019, the ALJ certified all pending issues back to the Commission.

On September 6, 2019, DCW filed *Updated Site Permit and Certificate of Need Applications*. The updated CN application (Revised Application) reflects that the previously proposed interconnection transmission line is no longer proposed, and indicates that the previously negotiated purchased power agreement (PPA) with Minnesota Municipal Power Agency (MMPA) is under renegotiation.

On September 13, 2019, the Commission issued a *Notice of Comment Period* requesting that parties provide comments on a number of issues related to the Route Permit and the CN Application. Specifically the Commission requested that parties comment on:

- What action should the Commission take on Dodge County Wind, LLC's (DCW) August 14 Request to Withdraw Application for a Route Permit?
- Does the Commission have the authority to consider a certificate of need application for a proposed electric power generating plant that does not include associated transmission lines necessary to interconnect the plant to the transmission system (see Minn. Stat. § 216B.2421, subd. 2(1)?
- What procedural actions should the Commission take concerning the revised certificate of need and site permit applications?
  - Are the revised certificate of need and site permit applications, filed by DCW on September 6, 2019, still considered substantially complete?
  - Is the current draft environmental impact statement still the appropriate review document or should it be an environmental report or other?
  - What is the appropriate procedural process for reviewing the revised applications? Continue the joint contested case proceeding when appropriate? Authorize review of the revised certificate of need application under the informal process? Restart the application review process, and if so, at what stage (application completeness, public information and scoping meeting, or public hearing)?
- What action should the Commission take on Laborers District Council of Minnesota and North Dakota's (LIUNA) September 5 Request to Consider Motions to Compel Discovery and Reverse Prohibition on Representation of LIUNA Minnesota and North Dakota by a Non-Attorney?

## II. DEPARTMENT DISCUSSION

The Department's comments below pertain only to the Certificate of Need proceeding as to certain issues. That said, as to the Commission's action on LIUNA's Motions, the Department understands LIUNA's desire for clarity, and given the importance of maintaining the Commission's long-term and continuing relationship with the Office of Administrative hearings (OAH), supports resolution of the relevant issues to the extent the Commission expects doing so may be helpful to the OAH and parties.

The Department provides comments on the following questions:

- Does the Commission have the authority to consider a certificate of need application for a proposed electric power generating plant that does not include associated transmission lines necessary to interconnect the plant to the transmission system (see Minn. Stat. § 216B.2421, subd. 2(1))?
- What procedural actions should the Commission take concerning the revised certificate of need and site permit applications?
  - Are the revised certificate of need and site permit applications, filed by DCW on September 6, 2019, still considered substantially complete?
  - What is the appropriate procedural process for reviewing the revised applications? Continue the joint contested case proceeding when appropriate? Authorize review of the revised certificate of need application under the informal process? Restart the application review process, and if so, at what stage (application completeness, public information and scoping meeting, or public hearing)?

*A. DOES THE COMMISSION HAVE THE AUTHORITY TO CONSIDER A CERTIFICATE OF NEED APPLICATION FOR A PROPOSED ELECTRIC POWER GENERATING PLANT THAT DOES NOT INCLUDE ASSOCIATED TRANSMISSION LINES NECESSARY TO INTERCONNECT THE PLANT TO THE TRANSMISSION SYSTEM (SEE MINN. STAT. § 216B.2421, SUBD. 2(1))?*

Minnesota Stat. § 216B.2421, subd. 2(1) states that a large energy facility is defined as:

[A]ny 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. [Emphasis added.]

The Department is unaware of an instance in which the Commission has considered and approved a CN application for a large electric generating facility that lacked any proposal for associated facilities to enable interconnection to the transmission system. With that understanding and a plain reading of Minnesota Stat. § 216B.2421, subd. 2(1), the Department concludes that a proposed large generating facility's ability to interconnect to the transmission system is a material and necessary part of any proposed large generating facility's CN application because energy generated from a large energy facility must be deliverable in order to be used. Taking this concept to the extreme, if the output of a proposed project cannot be delivered to load, the need for the project would be highly questionable.

The definition of "large energy facility" noted above is also logical from the standpoint of the Commission's duty to consider a broad range of impacts of a large energy facility in making its need determination. Without information on the costs and other potential impacts of the necessary interconnection facilities, the Commission would be unable to include those impacts in its assessment of need.

Further, the Department notes that the Commission has determined that a separate CN proceeding for a transmission line large enough to be considered a large energy facility, but functioning as an associated facility to a large generating facility, is not required, meaning it is to be considered as part of a generation plant CN proceeding.<sup>1</sup>

In conclusion, it appears to the Department that Minnesota Stat. § 216B.2421, subd. 2(1) requires a CN applicant to include in its petition information regarding the associated facilities necessary to interconnect the project to the transmission system.

*B. WHAT PROCEDURAL ACTIONS SHOULD THE COMMISSION TAKE CONCERNING THE REVISED CERTIFICATE OF NEED AND SITE PERMIT APPLICATIONS?*

1. Are the revised certificate of need and site permit applications, filed by DCW on September 6, 2019, still considered substantially complete?

In any completeness review regarding a CN for a power plant, the Department assesses whether the Commission should conclude that the application meets the completeness criteria as laid out in Minnesota Rules, parts 7849.0240, 7849.0250, and 7849.0270 to 7849.0340, and, if applicable, the Commission's determinations on an applicant's request for exemptions from certain of those rule requirements. In this case, the Commission issued its Order on DCW's exemption requests and Notice Plan on July 7, 2017 (Exemption Order). Notably, certain exemption requests were approved conditioned upon the applicant providing relevant data from the purchaser. If the purchaser changes, the Application will need to be amended to include information based on the new purchaser's system needs. Therefore, and given the Exemption Order, the Department cannot conclude that the Revised Application is complete until the purchaser is determined. Should the Applicant choose to indicate that it intends to proceed with the Project without a purchaser, DCW would have to request that the Commission's Exemption Order be modified to the extent the exemptions approved were conditioned upon DCW providing information regarding the purchaser's system needs.

As noted above, the Applicant removed all discussion of the transmission tie associated facility, including cost information and the environmental information required by Minnesota Rules, part 7849.0310 related to the associated transmission line. As noted above, this information is required by Minnesota Rules, and is needed in order for the Commission to base its decision on a complete record. The Department is also unaware of any matter where the Commission has found a CN application for a generation plant complete that did not include any plans for interconnection to the transmission system. Thus, consistent with the rule requirements, the Commission has appeared to treat information regarding the project's interconnection to the transmission system as integral to the project when considering whether a CN application is complete.

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<sup>1</sup> See *In re Application of Noble Flat Hill Windpark I, LLC for a Certificate of Need for a Large Energy Facility, a 201 MW Large Wind Conversion Sys. and Associated Facilities in Clay Cnty.*, MPUC Docket No. IP-6687/CN-08-851, Order Granting Exemption, Approving Notice Plan as Modified and Granting Variance at 1 (Oct. 16, 2008).

It is thus the Department's conclusion that the Revised Application is not complete until the Applicant has finalized PPA negotiations and has determined what associated facilities would be needed to interconnect the Project to the transmission system, and provides that information to the Commission.

2. What is the appropriate procedural process for reviewing the revised applications? Continue the joint contested case proceeding when appropriate? Authorize review of the revised certificate of need application under the informal process? Restart the application review process, and if so, at what stage (application completeness, public information and scoping meeting, or public hearing)?

As noted above, the Department concludes that the Revised Application is not yet complete, and a completeness determination cannot be made until the PPA status is resolved and the associated interconnection facilities are known. Therefore, the Department does not recommend that the Commission move forward with any analysis at this time. Specifically, as indicated above, without an associated interconnection transmission facility identified, it is impossible to fully and accurately analyze the costs, impacts, and benefits of the Project. Further, the Commission's exemption order requires that the purchaser's system needs are to be assessed when evaluating the merits of the Application. Such an analysis cannot be done if the purchaser is unknown.

Thus, the Department believes that the appropriate procedural process for this matter is to wait for the Applicant to file a new revised application with an identified interconnection facility, at which point the process should continue at the completeness phase. The Department believes that if the process is restarted at the completeness phase, the Commission can decide at that time, given the new information, how the review should continue to go forward, and whether the review should proceed as a contested case or via the informal process.

### **III. RECOMMENDATIONS**

The Department recommends that the Commission suspend the proceedings until the Applicant is able to file a complete revised application, including information regarding the associated facilities necessary to interconnect the Project to the transmission system, in conformance with Minnesota Rules, parts 7849.0240, 7849.0250, and 7849.0270 to 7849.0340, and the Commission's July 7, 2017 Exemption Order.

/ar

## **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 **27<sup>th</sup>** day of **September 2019**

**/s/Sharon Ferguson**

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