

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger  
David C. Boyd  
J. Dennis O'Brien  
Phyllis A. Reha  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of Black Oak Wind, LLC and Getty Wind Company, LLC for a Certificate of Need for an up to 82 MW Large Energy Facility in Stearns County

ISSUE DATE: December 31, 2012

DOCKET NO. IP-6853, 6866/CN-11-471

ORDER GRANTING CERTIFICATE OF  
NEED AND FINDING  
ENVIRONMENTAL REPORT  
ADEQUATE

**PROCEDURAL HISTORY**

On October 11, 2011, Black Oak Wind, LLC and Getty Wind Company, LLC (the Applicants) filed an application for a certificate of need for an up to 82 megawatt large electric generation facility in Stearns County. The Applicants had earlier been granted an exemption from specific information requirements in the Commission's certificate of need rules.<sup>1</sup>

On February 1 and June 28, 2012 the Department of Commerce (the Department) filed comments on the projects. The Department recommended approval of the application for a certificate of need.

On May 7, 2012 the Department issued an environmental report on the projects.

On August 24, 2012, the Minnesota Department of Natural Resources (DNR) filed comments.

A public hearing on the projects and associated facilities was held on the evening of June 26, 2012 at the Sauk Centre City Hall in Sauk Centre, Minnesota. Administrative Law Judge Bruce H. Johnson presided over the hearing and submitted his summary of public comment on August 8, 2012.

On December 6, 2012, the Commission met to consider the matter.

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<sup>1</sup> Order of August 22, 2011, this docket. Applicants filed additional comments and a revised avian and bat projection plan on July 11, 2012.

## FINDINGS AND CONCLUSIONS

### **I. The Proposed Projects**

Applicants propose projects consisting of between 27 and 52 wind turbines between 1.5 and 3.0 MW, transformers, a project substation, 6-12 miles of turbine access roads, an operation and maintenance facility, collection lines, a 69 kV transmission line, and up to two permanent meteorological towers per project.<sup>2</sup>

The project areas are located in Stearns County in central Minnesota, southwest of the city of Sauk Centre. The total area of the projects will be approximately 14,700 acres (22 square miles), most of which is agricultural land. The projects will connect to the electrical transmission grid at Xcel Energy's Black Oak switching station, located approximately three miles away.

As independent power producers, Applicants plan to sell the power generated by the projects to one or more utilities to satisfy the Renewable Energy Standards in Minnesota.<sup>3</sup> The Applicants' plan envisions that construction of the projects will commence in 2013, and the projects will be in service by the end of 2013.

### **II. The Legal Standard for a Certificate of Need**

#### **A. The Initial Certificate of Need 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 facility<sup>4</sup> and directed the Commission to "adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to the section."<sup>5</sup>

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

#### **B. The Rules**

In 1983, the Commission, in compliance with its statutory obligation to establish assessment of need criteria, adopted the certificate of need rules, Minn. Rules, Chapter 7849. One of those rules,

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<sup>2</sup> Black Oak Wind initially applied for a 42 MW LWECs site permit (Docket No. IP-6853/WS-10-1240). During development of the project Black Oak Wind came to an agreement with Getty Wind Project, a wind developer working on a project adjacent to the area covered in the Black Oak site permit the Getty site permit project. Applicants came to an agreement that the projects may be jointly owned in the future, and agreed to coordinate efforts to obtain a certificate of need. Getty Wind submitted a site permit application which the Commission heard on the same day it heard this matter (See Docket No. IP-6866/WS-11-831).

<sup>3</sup> Minn. Stat. § 216B.1691.

<sup>4</sup> Minn. Stat. § 216B.243, subd. 3.

<sup>5</sup> Minn. Stat. § 216B.243, subd. 1.

Minn. Rules, part 7849.0120, addressed the eight factors identified in the statute and directed the Commission to issue a certificate of need when the applicant demonstrates:

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

(C) by a preponderance of the evidence on the record, 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) 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, Minn. Stat. § 216B.243, subd. 3, was amended to add four additional factors for the Commission to evaluate in assessing need:

(9) with respect to high-voltage transmission lines, 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 customers in Minnesota;<sup>6</sup>

(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 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;<sup>7</sup>

(11) whether the applicant has made the demonstrations required under subdivision 3a,<sup>8</sup> 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.<sup>9</sup>

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<sup>6</sup> Minn. Stat. § 216B.243, subd. 3(9).

<sup>7</sup> Minn. Stat. § 216B.243, subd. 3(10).

<sup>8</sup> Minn. Stat. § 216B.243, subd. 3(11).

<sup>9</sup> Minn. Stat. § 216B.243, subd. 3(12).

### III. The Department's Comments and Environmental Report

In its February 1, 2012 comments, the Department examined the application for a certificate of need with respect to the criteria established in statute and rule and explained why it believed the application met those criteria. An itemization of the criteria addressed and the Department's recommendations regarding the criteria follows:

<b>Rules and Statutes Addressed in the Comments</b>		
<b>Statute or Rule Citation</b>	<b>Department Comment</b>	<b>Location</b>
<p><b>7849.0120 CRITERIA.</b> A certificate of need must be granted to the applicant on determining that:</p>		
<p>A. 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, considering:</p>		
<p>(1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;</p>	The Applicants' forecast of the need for the renewable energy is reasonable.	<b>II.A.1.a</b>
<p>(2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;</p>	The criteria regarding DSM have been met.	<b>II.B.3</b>
<p>(3) the effects of promotional practices of the applicant that may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;</p>	This subcriterion has been met.	<b>II.F.2</b>
<p>(4) the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and</p>	Current and planned facilities not requiring a CN have not been demonstrated to be more reasonable than the proposed Projects.	<b>II.C.1.a</b>
<p>(5) the effect of the proposed facility, or a suitable modification thereof, in making efficient use of resources;</p>	Not directly addressed.	

<b>Rules and Statutes Addressed in the Comments (Continued)</b>		
<b>Statute or Rule Citation</b>	<b>Department Comment</b>	<b>Location</b>
B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record, considering:		
(1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;	The proposed Projects' size is not excessive and therefore is reasonable the proposed Projects' type is reasonable The timing of the proposed Projects is reasonable	<b>II.B.1</b>
(2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;	This subcriterion has been met	<b>II.C.1.b</b>
(3) the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and	This subcriterion has been met	<b>II.C.1.c</b>
(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;	This subcriterion has been met	<b>II.C.2</b>
C. by a preponderance of the evidence on the record, 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, considering:		
(1) the relationship of the proposed facility, or a suitable modification thereof, to overall state energy needs;	The proposed Projects fit the state's overall energy needs.	<b>II.A.1.b</b>

<b>Rules and Statutes Addressed in the Comments (Continued)</b>		
<b>Statute or Rule Citation</b>	<b>Department Comment</b>	<b>Location</b>
(2) the effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the effects of not building the facility;	Not directly addressed.	<b>II.E<sup>10</sup></b>
(3) the effects of the proposed facility, or a suitable modification thereof, in inducing future development; and	Not directly addressed.	<b>II.E<sup>11</sup></b>
(4) the socially beneficial uses of the output of the proposed facility, or a suitable modification thereof, including its uses to protect or enhance environmental quality; and	Not directly addressed.	<b>II.E<sup>12</sup></b>
D. 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.	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, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.	<b>II.F.1</b>
Minnesota Statutes §216B.243, subd. 3 (9)	This statute does not apply.	<b>II.F.5</b>
Minnesota Statutes §216B.243, subd. 3 (10) Compliance with §216B.2425, subd. 7	This statute does not apply.	<b>II.F.5</b>
Minnesota Statutes §216B.243 subd. 3 (10) Compliance with §216B.1691	This criterion is not applicable.	<b>II.F.3.a</b>
Minnesota Statutes §§216B.243, subd. 3 (11), 216B.243 subd. 3a, & 216B.2422, subd. 4	The proposed Projects meet that preference.	<b>II.B.2</b>
Minnesota Statutes §216B.243, subd. 3 (12)	This statute does not apply.	<b>II.F.4</b>
Minnesota Statutes §216B.2426	The requirement to consider distributed generation has been met.	<b>II.C3</b>

#### **IV. The Department's Environmental Report**

In response to the scoping decision (issued on February 28, 2012), the Department prepared and filed an environmental report on May 7, 2012, analyzing the potential impacts associated with the

<sup>10</sup> The Department's February 1, 2012 comments address socioeconomic factors in section II. E of its report (there is no section IID). The Department's February 1, 2012 itemization of the criteria addressed (at the conclusion of its comments) erroneously list these criteria as found under section IID.

<sup>11</sup> See fn 10 *infra*.

<sup>12</sup> See fn 10 *infra*.

proposed project. As the proposed project is intended to produce renewable energy in furtherance of Minnesota's renewable energy standards, the alternatives considered were technologies eligible to be counted toward these objectives: (1) an 82 MW LWECS sited elsewhere in Minnesota, (2) a 38.5 MW biomass plant, and (3) a "no build" alternative. Section 5 of the report examined the human and environmental impacts of the projects. Section 6 evaluated these alternatives to determine feasibility and availability.

## **V. Commission Action**

At the time of a final decision on a certificate of need application, the Commission will determine whether the environmental report, and the record supporting the report, address the issues identified by the scoping decision issued under Minn. Rules, part 7849.1800, subp. 7. The Commission has reviewed the environmental report and finds that the report and supporting record adequately address the issues identified by the scoping decision.

The Commission has reviewed the Department's comments and will accept the Department's findings and recommendations. The Commission has considered the factors identified in statute and rule and will grant Applicants a certificate of need.

Based on the record, the Commission makes findings on these four points:

First, based on a consideration of the factors set forth in Minn. Rules, part 7849.0120(A), the Commission concludes that denying the application would likely have an adverse impact on project participants, as well as ratepayers in Minnesota and neighboring states. Considering the size of regional need for renewable energy in the years to come, the Commission concurs with the Department that Applicants' forecast of the need for additional renewable energy supplies is reasonable. Further, because Applicants are independent power producers acting at present without a power purchase agreement, there is no ratepayer risk involved in the development of these projects.

Second, based on a consideration of the factors set forth in Minn. Rules, part 7849.0120(B), the Commission concludes that a more reasonable and prudent alternative to the project has not been demonstrated by a preponderance of the evidence in the record.

Third, based on a consideration of the factors set forth in Minn. Rules, part 7849.0120(C), the Commission concludes that the preponderance of the evidence in the record demonstrates that the project, with appropriate site permit conditions and requirements, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health.

Fourth, based on a consideration of the factors set forth in Minn. Rules, part 7849.0120(D), the Commission concludes that the record does not demonstrate that the design, construction, or operation of the project, or a suitable modification of the project, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

**ORDER**

1. The Commission finds that the Environmental Report adequately addresses the issues identified in the environmental report scoping decision.
2. The Commission grants Black Oak and Getty Wind a certificate of need for up to 82 MW for the Black Oak and Getty Wind projects and associated facilities
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary



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