

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of the Application of Dodge County Wind, LLC for a Certificate of Need for the Dodge County Wind Project and Associated Facilities in Dodge, Steele, and Olmsted Counties, Minnesota

ISSUE DATE: November 1, 2018

DOCKET NO. IP-6981/CN-17-306

In the Matter of the Application of Dodge County Wind, LLC for a Site Permit for the Dodge County Wind Project and Associated Facilities in Dodge and Steele Counties, Minnesota

DOCKET NO. IP-6981/WS-17-307

In the Matter of the Application of Dodge County Wind, LLC for a Route Permit for the 345 kV High-Voltage Transmission Line Associated with the Dodge County Wind Project in Dodge and Olmsted Counties, Minnesota

DOCKET NO. IP-6981/TL-17-308

NOTICE OF AND ORDER FOR HEARING

PROCEDURAL HISTORY

On June 29, 2018, Dodge County Wind, LLC (the Applicant) filed one certificate of need and two permit applications (a site permit and a transmission line route permit application) related to its proposal to construct a Large Wind Energy Conversion System (LWECS) of up to 170 megawatts (MW) in Dodge, Steele, and Olmsted Counties.

On July 13, 2018, the Commission issued a notice seeking comments on the completeness of the applications, whether an Environmental Impact Statement (EIS) should be prepared, whether the applications should be referred to the Office of Administrative Hearings for contested case proceedings, and whether an advisory task force should be appointed.

By August 16, 2018, the Commission received comments on the applications from the following: the Department of Commerce, Energy Environmental Review and Analysis staff (EERA); the Department of Commerce, Division of Energy Resources (the Department); Dodge County; Dodge County Concerned Citizens; Laborers District Council of Minnesota and North Dakota; and approximately two dozen members of the public.

On August 17, 2018, the Applicant filed reply comments.

On September 4, 2018, the Department filed reply comments.

On September 27, 2018, the applications came in front of the Commission.

FINDINGS AND CONCLUSIONS

I. Introduction

Under Minn. Stat. § 216B.243, subd. 2, “no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission.” The proposed Project meets the definition of a large energy facility under Minn. Stat. § 216B.2421, subd. 2 (1), which includes “any 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.” The proposed Project would include an LWECS of up to 170 MW and a 345 kilovolt (kV) high-voltage transmission line.

In addition to the certificate of need requirements, a site permit is required from the Commission to construct an LWECS, which includes a facility of 5,000 kilowatts (kW) or more.¹ And, a route permit is required for construction of a high-voltage transmission line, which includes a transmission line of 100 kV or larger.²

II. Rule Variance to Consider the Applications

Under Minn. R. 7849.0200, subp. 5, the Commission must determine the completeness of the certificate of need application within 30 days of the filing, and under Minn. R. 7854.0600, subp. 1, must determine the completeness of the site permit application within 30 days of the filing. Under Minn. R. 7854.0800, subp. 1, the Commission must determine whether to issue a draft site permit for the proposed LWECS within 45 days of acceptance of the permit application.

The Commission issued an order on October 4, 2018, finding the applications complete. That decision is as to form only and implies no judgement on the merits of the applications.

Under Minn. R. 7829.3200, the Commission must vary its rules upon making the following findings:

- (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 Commission finds that the requirements for a variance to Minn. R. 7849.0200, subp. 5, to Minn. R. 7854.0600, subp. 1, and to 7854.0800, subp. 1, in this case are met. Enforcement of the

¹ Minn. Stat. § 216F.04 and 01.

² Minn. Stat. § 216E.03 and 01.

30-day completeness determinations and enforcement of the 45-day draft site permit requirement would impose an excessive burden on those affected by the rule by unreasonably limiting the time period for comments on the completeness of the application and on potential impacts and alternatives. Further, granting the variance would not adversely affect the public interest and would, in fact, further the public interest by ensuring sufficient time for interested persons to provide input. Further, granting a variance would not conflict with standards imposed by law.

For these reasons, the Commission will grant a variance to Minn. R. 7849.0200, subp. 5; Minn. R. 7854.0600, subp. 1; and Minn. R. 7854.0800, subp. 1.

III. Comments

The EERA noted that a contested case proceeding is required for the high-voltage transmission line permit application and that an Environmental Impact Statement is also required.³ To facilitate record development on all three applications, the EERA recommended joint proceedings, including joint public hearings and joint environmental review. No one recommended separate proceedings, and the Applicant concurred with the EERA that it would be reasonable to conduct joint proceedings.

IV. Environmental Review and Joint Proceedings

Under Minn. R. 7849.1900, subpart 2, the Commission has authority to conduct joint proceedings on a certificate of need and a route/site permit application, following the procedures of Minn. R. 7850.1000 to 7850.5600, including combining environmental review by conducting an environmental impact statement on both applications (in lieu of a separate environmental report on the certificate of need application under Minn. R. 7849.1200). In this case, the Commission concurs with the EERA that it is reasonable to conduct concurrent review of all three applications by combining environmental review and holding joint proceedings.

To facilitate joint proceedings, the Commission will delegate administrative authority to the Executive Secretary and will take the following steps:

- Appoint the Commission's public advisor, Charley Bruce, as the public advisor in this case;
- Request that the Department continue to study issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need, site permit, and route permit;
- Require the Applicant to facilitate in every reasonable way the continued examination of the issues raised by the Department, the EERA, and Commission staff;
- Require the Applicant to place a copy of each application (print and/or electronic) for review in at least one governmental center or public library in each county where the proposed Project would be located;
- Direct the Applicant to work with Commission staff and the EERA to arrange for publication of the notices related to public information meetings and public hearings in newspapers of general circulation under the timelines prescribed in rule and statute, that such notice be in the form of visible display ads, and that proof of publication be obtained from the newspapers selected.

³ Minn. Stat. § 216E.03, subs. 5 and 6.

V. Jurisdiction and Referral for Contested Case Proceedings

The Commission finds that it cannot resolve the issues raised in the applications on the basis of the record before it. The issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the applications to the Office of Administrative Hearings for contested case proceedings.

The Administrative Law Judge assigned to this matter will conduct hearings as described in this Notice and submit a Report to the Commission. Following receipt of the Administrative Law Judge's Report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Ch. 14 and 216B, 216E, and 216F.

VI. Issues to be Addressed

The Commission expects that in the course of this case the parties will develop a full record addressing issues raised that are relevant to the Commission's certificate of need and permit decisions.

VII. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is James Mortenson. His address is as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. His mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620. He can be reached through his legal assistant, Sheena Denny, at 651-361-7881.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. R. 1405.0200 to 1405.2700. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. R. 1400.5100 to 1400.8400 regarding contested cases shall apply, and to the extent they are not superseded by those rules, the Commission's rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.4000. Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minn. R. 1405.1400 to .2300.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.mn.gov/pubs.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. R. 1400.6700 to 1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Scott Ek (651) 201-2255, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota, 55101-2147.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified neutral interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Applicant and the Department. Other persons wishing to become formal parties must do so pursuant to Minn. R. 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition, and subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Rule Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention, the right to submit direct testimony and conduct cross-examination of other parties' witnesses, and the duty to submit prefiled testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. R. 1405.0500, subpart 1(I), and is not intended to be comprehensive. Interested parties are encouraged to review Chapter 1405 to identify the scope of rights and authority to act given to "persons" or restricted to "parties" under the various provisions of that chapter.

D. Prehearing Conference

A prehearing conference will be held on Tuesday, December 4, 2018 at 9:30 a.m. in the Large Hearing Room at the office of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

VIII. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth in Minn. R. 7845.7300 – 7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers the certificate of need, the site permit, and the route permit applications to the Office of Administrative Hearings for contested case proceedings.
2. The Commission hereby authorizes joint public hearings and combined environmental review on the applications, to the extent practical.
3. The Commission hereby requests that the EERA prepare an Environmental Impact Statement, in lieu of an Environmental Report.

4. The Commission requests that the Administrative Law Judge assigned to the case prepare a report setting forth findings of fact, conclusions of law, and a recommendation on the merits of the proposed project, as well as on permit conditions, considering the applicable statutory and rule criteria.
5. The Commission hereby delegates administrative authority to the Executive Secretary, to determine timing issues.
6. The Commission hereby takes steps to facilitate record development as described herein.
7. The Commission grants variances to Minn. R. 7849.0200, subp. 5; to Minn. R. 7854.0600, subp. 1; and to Minn. R. 7854.0800, subp. 1.
8. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

PUC Docket Number IP-6981/CN-17-306; IP-6981/WS-17-307; and IP-6981/TL-17-308
STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF APPEARANCE

In the Matter of the Application of Dodge County Wind, LLC for a Certificate of Need for the Dodge County Wind Project and Associated Facilities in Dodge, Steele, and Olmsted Counties

In the Matter of the Application of Dodge County Wind, LLC for a Site Permit for the Dodge County Wind Project and Associated Facilities in Dodge and Steele Counties, Minnesota

In the Matter of the Application of Dodge County Wind, LLC for a Route Permit for the 345 kV High-Voltage Transmission Line Associated with the Dodge County Wind Project in Dodge and Olmsted Counties, Minnesota

TO: Administrative Law Judge James Mortenson, 600 North Robert Street,
PO Box 64620, St. Paul, MN 55164

PLEASE TAKE NOTICE that:

1. The party named below will appear at the prehearing conference and subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the party named below hereby acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into electronic notice from the Office of Administrative Hearings with respect to this matter. **Note: Provision of an email address DOES NOT constitute the party's consent to electronic service from the opposing party/ies in this proceeding.**

3. The party named below agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel and to advise the Office of Administrative Hearings of any change in all parties' email address(es).

Party's/Agency's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Party's/Agency's Attorney: _____

Firm Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Respondent's/Opposing Party's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Dated: _____