

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: August 21, 2014 Agenda Item *1

Company: Bear Creek Wind Partners LLC

Docket No. IP-6629/WS-07-297

In the Matter of the Large Wind Energy Conversion System Site Permit
Issued to Bear Creek Wind Partners LLC

Issue(s): Should the Commission revoke the site permit?

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Relevant Documents

Order Issuing a Site Permit May 19, 2009
Order Granting Amendments to the Site Permit September 28, 2011
Department of Commerce Annual Compliance Review Letter February 15, 2013
Department of Commerce Annual Compliance Review Follow Up Letter October 17, 2013
Notice of Intent to Revoke Site Permit November 7, 2013
Notice of Comment Period on Site Permit Revocation November 27, 2013
Bear Creek Wind Partners LLC Response Letter December 12, 2013
Second Notice of Comment Period on Site Permit Revocation June 6, 2014
Department of Commerce Comments and Recommendations June 19, 2014

The attached materials are work papers of the Commission staff. They are intended for use by the Minnesota Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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I. Statement of the Issues

Should the Commission revoke the site permit?

II. Procedural History

On May 19, 2009, the Minnesota Public Utilities Commission issued a site permit to Bear Creek Wind Partners LLC (Permittee) to construct and operate an up to 47.5 megawatt (MW) Large Wind Energy Conversion System (LWECS) in Otter Tail and Todd counties, Minnesota.

On September 28, 2011, the Commission issued an order that amended the LWECS site permit to extend the deadline by which the Permittee must obtain a power purchase agreement or other enforceable mechanism by two years.

On February 15, 2013, the Minnesota Department of Commerce sent a letter to the Permittee that detailed its annual review of the site permit compliance requirements. The Department indicated that the Permittee had not provided notification to the Commission of the reasons: 1) construction of the project had not commenced; 2) a power purchase agreement or other enforceable mechanism had not been secured; and 3) documentation that a copy of the site permit had been mailed to local residents and bodies of government.¹ The Department requested that the Permittee provide a response regarding the missing compliance matters by March 28, 2013.

On October 17, 2013, the Department of Commerce filed a letter with the Commission that indicated the Permittee had not supplied the compliance information requested in the letter dated February 15, 2013, and recommended that the Commission send a letter to the Permittee requesting the information.

On November 7, 2013, the Commission sent a letter to the Permittee that requested a response to the site permit compliance matters identified by the Department of Commerce by November 21, 2013. The letter further indicated that if a response was not received the Commission would initiate revocation proceedings outlined under Minn. Stat. § 216F.04 and Minn. R. 7854.1300. Subsequently, a response was not received from the Permittee.

On November 27, 2013, the Commission issued a notice of comment period concerning revocation of the Bear Creek Wind Partners LWECS site permit. On June 6, 2014, a second notice of comment period was issued because the initial notice of comment period was inadvertently not circulated to relevant state agencies.

¹ Site permit sections III.K.2, III.J.4, and III.K.9, respectively.

III. Statutes and Rules

Under Minn. Stat. § 216E.14 and Minn. R. 7854.1300, the Commission may revoke or suspend a site permit for a LWECS at any time after adequate notice and hearing if it finds that the permittee has knowingly made a false statement in the application or required accompanying study; the permittee failed to comply with the material conditions of the permit; the permitted LWECS endangers human health or the environment and the danger cannot be resolved by modifications to the project or permit; or the permittee has violated other laws that reflect an inability to comply with the permit.

IV. Comments

Comment letters were received from Bear Creek Wind Partners and the Department of Commerce during the two open comment periods. These were the only comments received.

A. Comments of Bear Creek Wind Partners LLC

On December 12, 2013, Mr. John M. Ihle, on behalf of Bear Creek Wind Partners, filed a comment letter with the Commission. The letter indicated that Bear Creek Wind Partners will not be proceeding with the development of the 47.5 MW LWECS project and voluntarily withdraws from preserving the site permit. The Permittee explained that its decision to cease development of the project is mainly due to costs and uncertainties related to the MISO interconnection process, and the inability to secure a power purchase agreement or some other enforceable mechanism.

B. Comments of the Department of Commerce

On June 19, 2014, the Department of Commerce Energy Environmental Review and Analysis unit (EERA) filed comments and recommendations relating to the revocation of Bear Creek Wind Partners site permit. EERA suggested that the Commission has reason to grant Bear Creek Wind Partners request to revoke its site permit for the following reasons:

- Construction of the project has not commenced and the compliance filing required under site permit Section III.K.2 for providing information regarding the status of construction has not been submitted.
- A power purchase mechanism or other enforceable mechanism has not been secured and the compliance filing required under site permit Section III.J.4 for providing information regarding such information has not been submitted.
- Compliance with site permit Section III.K.9 concerning documentation that a copy of the site permit has been mailed to local residents and bodies of government has not been met.

- The Permittee has indicated that it will no longer move its development efforts forward and requested to withdraw the LWECS site permit.

V. Staff Discussion

Commission staff has reviewed the relevant documents in this matter and believes that under the circumstances there is sufficient reason to revoke the site permit for the reasons identified in the Department of Commerce Comments and Recommendations.

Commission Decision Alternatives

1. Revoke the Bear Creek Wind Partners LLC site permit issued by the Commission on May 19, 2009, and amended on September 28, 2011, for an up to 47.5 MW Large Wind Energy Conversion System in Otter Tail and Dodge counties.
2. Take some other action deemed appropriate.

Staff Recommendation: 1