

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 Flying Cow Wind, LLC for a Site Permit for the up to 152 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota

ISSUE DATE: January 30, 2018

DOCKET NO. IP-6984/WS-17-749

ORDER ACCEPTING APPLICATION, ESTABLISHING PROCEDURAL FRAMEWORK, AND VARYING RULES

PROCEDURAL HISTORY

On November 9, 2017, Flying Cow Wind, LLC (Flying Cow or Applicant) filed a site permit application for building the Bitter Root Wind Project in Yellow Medicine County to generate up to 152 megawatts (MW) of electricity from wind power (the project). Flying Cow had previously filed a Certificate of Need application for the project.¹

On November 28, 2017, the Commission issued a notice requesting comment on whether the application contained the information required under Minnesota Rules part 7854.0500; whether there are any contested issues of fact with respect to the representations made in the application; and whether the application should be referred to the Office of Administrative Hearings.

On December 19, 2017, the Minnesota Department of Commerce's Energy Environmental Review and Analysis unit (EERA) filed comments recommending that the Commission accept the application as complete and issue a variance to Minn. R. 7854.0800, establishing the timeline for rendering a preliminary determination on issuing a site permit.

The Commission also received comments opposed to the project from people living close to its proposed location.

On December 26, 2017, Flying Cow filed reply comments concurring with EERA's recommendations, and also requesting a variance to Minn. R. 7854.0600, subp. 3, regarding distribution of copies of the application.

¹ See *In the Matter of the Application of Flying Cow Wind, LLC for a Certificate of Need for the 150 MW Large Wind Energy Conversion System in Yellow Medicine County, Minnesota*, Docket No. IP-6984/CN-17-676.

On January 4, 2018, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

Finding that Flying Cow has substantially fulfilled the relevant filing requirements for a site permit, the Commission will establish the procedural steps for acting on the application. These steps include the following:

- Requesting that an administrative law judge conduct public hearings as set forth herein.
- Establishing additional procedural requirements.
- Varying rules to extend certain procedural timelines and to allow the Applicant to distribute parts of its application electronically rather than in paper.
- Delegating administrative authority, including timing issues, to the Executive Secretary.
- Designating a public advisor.

II. The Project

Flying Cow, an independent power producer, plans to develop its Bitter Root Wind Project in Yellow Medicine County on approximately 22,888 acres west of Canby, in the townships of Florida, Fortier, and Norman.

The project would include 37 Vestas turbines, each with a generating capacity of either 3.45 MW or 4.2 MW. It would also include gravel access roads, an electrical collection system, temporary and permanent meteorological towers, a project substation facility, an interconnection facility, a temporary concrete batch plant for construction, a temporary staging/laydown construction area, and an operations and maintenance facility.

III. Jurisdiction

Before building a large wind energy conversion system (LWECS)—that is, a system with a combined nameplate capacity of 5 MW or more—a developer must acquire a site permit from the Commission.² Because the Bitter Root Wind Project would have a generating capacity exceeding 5 MW, Flying Cow must obtain an LWECS site permit from the Commission. Minn. R. Ch. 7854 contains the application requirements and criteria for granting an LWECS site permit.

IV. Application Completeness

EERA reviewed the application for completeness under Minn. R. 7854.0500 and recommends that the Commission find the application complete.

Having reviewed the application and the parties' comments, the Commission concurs with EERA and will therefore accept the application as substantially complete.

² Minn. Stat. § 216F.01, subd. 2.

V. Review Process

A. Request Administrative Law Judge

To facilitate development of the record, the Commission will ask the Office of Administrative Hearings to assign an administrative law judge to conduct a public hearing. Specifically, the Commission will ask that the administrative law judge do the following:

- Conduct the public hearing in accordance with Minn. R. 7850.3800, subp. 2 to 4, and, as the administrative law judge deems appropriate, with Minn. R. 1405.0500, .0600, .0800, .1900, and .2200.
- Clarify that people may participate in these proceedings without intervening as a party. The Commission notes that EERA and the Applicant are parties to the proceeding, and other persons may participate as public participants or as otherwise prescribed.
- Ask state agencies to participate in the proceeding in accordance with Minn. Stat. § 216E.10, subd. 3.
- Schedule a prehearing conference in accordance with Minn. R. 1405.1100, as appropriate, to establish the types of filings necessary to facilitate proper record development (for example, testimony, briefs, reply briefs, proposed findings and site-permit recommendations) and a schedule for submitting those filings.
- Emphasize the statutory timeframe for the Commission to make final decisions on the application and encourage the Applicant and others to adhere to a schedule that conforms to the statutory timeframe.
- Address and ask others to address whether the project meets the criteria established under Minn. Stat. ch. 216F and Minn. R. ch. 7854.
- Summarize the public comments received during the hearing and the subsequent public comment period.
- Prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the Application, and provide recommendations, if any, on conditions and provisions regarding the proposed site permit.
- Direct that the hearing record be maintained through the Commission's e-Dockets filing system.

B. Additional Procedural Requirements

To further facilitate the review process, the Commission will take the following steps:

- Delegate administrative authority in this proceeding, including timing issues, to the Executive Secretary.

- Request that EERA continue to study the issues and indicate during the hearing process, through testimony or comments, its position on the reasonableness of granting a site permit.
- Require the Applicant to facilitate in every reasonable way the continued examination of the issues requested by EERA and Commission staff.
- Require the Applicant to place a print or electronic copy of the Application in the government center or public library located closest to the proposed project site.
- Direct the Applicant to provide notice of the hearing by publishing visible display ads in newspapers of general circulation at least ten days before the hearing, to work with Commission staff in making these arrangements, and to obtain proof of publication from the newspapers.
- Require that all notices required by Minn. Stat. ch. 216F and Minn. R. ch. 7854 be delivered to all affected landowners—that is, any landowner or designee within or adjacent to the project boundary.

VI. Rule Variances

A. Variance Standard

Under Minn. R. 7829.3200, the Commission will vary any of 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.

B. Extension of Timelines

Minn. R. 7854.0600, subp. 1, requires the Commission to decide on the completeness of an LWECS site permit application within 30 days of filing.

The Commission concludes that the requirements for a variance to Minn. R. 7854.0600, subp. 1, are met, and makes the following findings:

1. Enforcement of the rule would impose an excessive burden upon the Commission, EERA, and the public, because the rule does not allow enough time to review the Application, solicit comments, schedule a Commission meeting, and prepare a written order.

2. Varying the timeframe serves the public interest by allowing more time for public comment on, and for the Commission to consider, the Application.
3. Granting the variance does not conflict with standards imposed by law.

Accordingly, the Commission will vary Minn. R. 7854.0600, subp. 1, to extend the timeline contained in the rule.

Additionally, EERA requested a variance to Minn. R. 7854.0800, subp. 1, which requires the Commission to make a preliminary determination regarding the issuance or denial of a site permit within 45 days of accepting the application. EERA requests an extension to allow more time for the scheduling of the informal meeting and for public comment on the issues to be considered in the draft site permit.

The Commission concludes that the requirements for a variance to Minn. R. 7854.0800, subp. 1, are met, and makes the following findings:

1. Enforcement of the rule would impose an excessive burden upon the Commission, EERA, and the public, because it would not allow sufficient time to schedule and hold public information meetings, provide for an adequate public comment period, prepare a draft site permit, schedule a Commission meeting, and prepare a written order.
2. Varying the timeframe serves the public interest by allowing more time for public comment on issues to be considered in the draft site permit.
3. Granting the variance does not conflict with standards imposed by law.

Accordingly, the Commission will grant EERA's requested variance to Minn. R. 7854.0800, subp. 1, to extend the timeline contained in the rule.

C. Distribution of Application

In addition, Minn. R. 7854.0600, subp. 3, requires an applicant to provide copies of the application to various people. Flying Cow asks the Commission to vary this rule to permit Flying Cow to provide each specified recipient with a paper copy of the main application and maps, and provide the appendices via electronic media such as a CD or thumb drive or through a notice of a webpage containing the complete application.

The Commission concludes that the requirements for a variance to Minn. R. 7854.0600, subp. 3, are met, and makes the following findings:

1. Enforcement of the rule would impose an excessive burden upon the Applicant because it would require printing tens of thousands of additional pages to distribute hard copies to all requisite recipients of the application.

2. Granting the variance would not adversely affect the public interest and would instead provide greater accessibility to the large volume of information in the application.
3. Granting the variance does not conflict with standards imposed by law.

Accordingly, the Commission will grant the Applicant's requested variance to allow it to provide hard copies or electronic copies of the Application and maps, and provide appendices via electronic means such as a CD or thumb drive.

VII. Public Advisor

Finally, upon acceptance of an application for a site permit, the Commission designates a staff person to act as the Public Advisor on the project under Minn. R. 7854.0700. The Public Advisor is available to answer questions from the public about the permitting process. In this role, the Public Advisor may not act as an advocate on behalf of any person.

The Commission will designate Charley Bruce to facilitate and coordinate public participation in this proceeding. His contact information is as follows:

Charley Bruce, Public Advisor, Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350, Saint Paul, Minnesota 55101-2147
651.221.2251
PublicAdvisor.PUC@state.mn.us

The Commission will so order.

ORDER

1. The Commission accepts as substantially complete the application of Flying Cow Wind, LLC, for a site permit to build the Bitter Root Wind Project in Yellow Medicine County.
2. The Commission requests that an administrative law judge from the Office of Administrative Hearings preside over the public hearing as described below:
 - A. Conduct the public hearing in accordance with Minn. R. 7850.3800, subp. 2 to 4, and, as the administrative law judge deems appropriate, with Minn. R. 1405.0500, .0600, .0800, .1900, and .2200.
 - B. Clarify that people may participate in these proceedings without intervening as a party.
 - C. Ask state agencies to participate in the proceeding in accordance with Minn. Stat. § 216E.10, subd. 3.
 - D. Schedule a prehearing conference in accordance with Minn. R. 1405.1100, as appropriate, to establish the types of filings necessary to facilitate proper record

development (for example, testimony, briefs, reply briefs, proposed findings and site-permit recommendations) and a schedule for submitting those filings.

- E. Emphasize the statutory timeframe for the Commission to make final decisions on the application and encourage the Applicant and others to adhere to a schedule that conforms to the statutory timeframe.
 - F. Address and ask others to address whether the project meets the criteria established under Minn. Stat. ch. 216F and Minn. R. ch. 7854.
 - G. Summarize the public comments received during the hearing and the subsequent public comment period.
 - H. Prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the Application, and provide recommendations, if any, on conditions and provisions regarding the proposed site permit.
 - I. Direct that the hearing record be maintained through the Commission's e-Dockets filing system.
- 3. The Commission delegates administrative authority in this proceeding, including timing issues, to the Executive Secretary.
 - 4. The Commission requests that EERA continue to study the issues and indicate during the hearing process, through testimony or comments, its position on the reasonableness of granting a site permit.
 - 5. The Commission directs the Applicant to comply with all requirements set forth below:
 - A. The Applicant shall facilitate in every reasonable way the continued examination of the issues requested by EERA and Commission staff.
 - B. The Applicant shall place a print or electronic copy of the Application in the government center or public library located closest to the proposed project site.
 - C. The Applicant shall provide notice of the hearing by publishing visible display ads in newspapers of general circulation at least ten days before the hearing, to work with Commission staff in making these arrangements, and to obtain proof of publication from the newspapers.
 - D. All notices required by Minn. Stat. ch. 216F and Minn. R. ch. 7854 shall be delivered to all affected landowners—that is, any landowner or designee within or adjacent to the project boundary.
 - 6. The Commission varies Minn. R. 7854.0600, subp. 1, and Minn. R. 7854.0800, subp. 1, to extend the timelines contained in those rules.

7. The Commission varies Minn. R. 7854.0600, subp. 3, to permit Flying Cow to provide each specified recipient with a paper copy of the main application and maps, and provide the appendices via electronic media such as a CD or thumb drive or through a notice of a webpage containing the complete application.
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.