

Staff Briefing Papers

Meeting Date: November 14, 2019

Agenda Item *1

Company: Dodge County Wind, LLC

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

In the Matter of the Application of Dodge County Wind, LLC for a Certificate of Need for the 170 MW Dodge County Wind Project and Associated Facilities in Dodge, Steele, and Olmsted Counties, Minnesota

IP-6981/WS-17-307

In the Matter of the Application of Dodge County Wind, LLC for a Site Permit for the 170 MW Dodge County Wind Project and Associated Facilities in Dodge and Steele Counties, Minnesota

IP-6981/TL-17-308

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

- Issues:
1. What action should the Commission take on Dodge County Wind, LLC's (DCW) August 14 Request to Withdraw its Application for a Route Permit?
 2. What procedural actions should the Commission take concerning the revised certificate of need and site permit applications?
 3. What action should the Commission take on Laborers District Council of Minnesota and North Dakota's (LIUNA) September 5 Request to Consider

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

Motions to Compel Discovery and Reverse Prohibition on Representation of LIUNA by a Non-Attorney?

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✓ Relevant Documents	Date
Order Approving Notice Plan, Exemptions to Certificate of Need Application Information Requirements, and Variance	07/07/2017
DCW Application for a Certificate of Need (7 Parts)	06/29/2018
DCW Application for a Site Permit (3 Parts)	06/29/2018
DCW Application for a Route Permit (3 Parts)	06/29/2018
Order Finding Certificate of Need, Site Permit, and High-Voltage Transmission Line Route Permit Applications Complete	10/04/2018
Notice of and Order for Hearing	11/01/2018
DCW Amendments to Site Permit Application (11 Parts)	01/10/2019
DCW Amendments to Certificate of Need Application	01/18/2019
DCW Revised Table 1 to Site Permit Application Amendments	01/18/2019
Order Identifying Routing Alternatives and Issuing Draft Site Permit	04/15/2019
Environmental Impact Statement (EIS) Scoping Decision	04/25/2019
LIUNA Motion to Compel Discovery from DCW and Extend Deadlines for Submission of Pre-Filed Testimony (Submitted to Administrative Law Judge)	07/22/2019
DCW Reply to LIUNA July 22 Motion to Compel	07/26/2019
Draft EIS (3 Parts)	07/29/2019
DCW Responses to LIUNA 2nd and 3rd IRs	08/02/2019
LIUNA Response to DCW July 26 Reply Comments	08/02/2019
Office of Administrative Hearings (OAH) Order on LIUNA July 22 Motion to Compel	08/07/2019
DCW Request to Withdraw Application for a Route Permit	08/14/2019
DCW Motion to Suspend Procedural Schedule	08/14/2019

✓ Relevant Documents	Date
LIUNA Motion to ALJ Requesting Certification of July 22 Motion and OAH August 7 Order on Motion to Compel to the Commission	08/21/2019
DOC EERA Letter to ALJ	08/27/2019
LIUNA Objection to DCW’s August 14 Request to Withdraw Application for a Route Permit	08/30/2019
OAH Order Suspending Contested Case Proceeding and Certifying Contested Case to the Commission	08/30/2019
LIUNA Request [to Commission] to Consider Motions to Compel Discovery and Reverse ALJ Prohibition on Representation of LIUNA Minnesota and North Dakota by a Non-Attorney	09/05/2019
Revised Application for a Certificate of Need (3 Parts)	09/06/2019
Revised Application for a Site Permit (5 Parts)	09/06/2019
DCW Amended Attachment 2 to July 26 Reply Comments	09/13/2019
DOC DER Initial Comments	09/27/2019
DOC EERA Initial Comments	09/27/2019
DCW Initial Comments	09/27/2019
LIUNA Initial Comments	09/30/2019
DCW Reply Comments	10/04/2019
LIUNA Reply Comments	10/07/2019
Second Revised Application for a Site Permit (4 Parts)	10/15/2019
LIUNA Supplemental Reply Comments	10/31/2019

I. STATEMENT OF THE ISSUES

- What action should the Commission take on Dodge County Wind, LLC’s August 14 Request to Withdraw its Application for a Route Permit?
- What procedural actions should the Commission take concerning the revised certificate of need and site permit applications?
- What action should the Commission take on LIUNA’s September 5 Request to Consider Motions to Compel Discovery and Reverse Prohibition on Representation of LIUNA by a Non-Attorney?

II. PROJECT DESCRIPTION

Dodge County Wind, LLC (DCW) has applied to the Commission for a certificate of need, a large wind energy conversion system (LWECS) site permit, and a high-voltage transmission line (HVTL) route permit for a proposed 170 megawatt (MW) wind farm to be located in Dodge and Steele counties that would include an associated 21- to 26-mile 345 kilovolt (kV) transmission line to be located in Dodge and Olmsted counties to connect the wind facility to the transmission system. DCW has indicated that it has a Power Purchase Agreement (PPA) with the Minnesota Municipal Power Agency (MMPA), whereby MMPA will purchase the full output of the project for a 30-year term. DCW is a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC based in Juno Beach, Florida. NextEra Energy Resources, LLC, is primarily a wholesale power generator and a subsidiary of NextEra Energy, Inc.

III. PROCEDURAL HISTORY

On April 20, 2017, DCW filed a Notice Plan with the Commission for its proposed 21- to 26-mile 345 kV transmission line associated with its proposed Dodge County Wind Farm. On that same day, DCW filed a Petition for Exemption from Certain Certificate of Need Application Requirements.

On July 7, 2017, the Commission issued an order that approved DCW's Notice Plan, granted a variance to the timing requirements associated with the filing of its certificate of need application, and approved exemptions to certain certificate of need data requirements.

On July 6, 2018, DCW filed a compliance document with the Commission verifying that it had provided notice of its certificate of need application including the proposed 21- to 26-mile 345 kV HVTL between June 5 and 7, 2018, via newspaper publications and direct mailing to landowners and tribal and local governments in accordance with the approved Notice Plan.

On June 29, 2018, DCW filed a certificate of need application, a site permit application, and a route permit application for the proposed 170 MW Dodge County Wind Farm project.

On October 4, 2018, the Commission issued an order that accepted the certificate of need, site permit, and route permit applications as substantially complete.

On October 25, 2018, staff from the Commission and the Department of Commerce Energy Environmental Review and Analysis unit (DOC EERA) conducted a public information and EIS

scoping meeting in Owatonna, Minnesota. A comment period was open until November 15, 2018, to receive comments on the scope of the EIS and the sample draft site permit.

On November 1, 2018, the Commission issued a Notice of and Order for Hearing that, among other procedural items, referred the certificate of need, site permit, and route permit applications to the Office of Administrative Hearings (OAH) for joint public and contested case proceedings; authorized combined environmental review of the applications; and requested DOC EERA prepare an EIS for the project.

On January 10 and 18, 2019, DCW filed amendments to its site permit and certificate of need applications, respectively, changing the number, type, size, and layout of the turbines to be used and the wind rights and associated setbacks. The filings also provided DCW's latest analysis of the anticipated levels of sound, shadow flicker, and electromagnetic interference to result from the wind facility.

On April 15, 2019, the Commission issued its Order Identifying Routing Alternatives and Issuing Draft Site Permit. The order (1) authorized issuance of a draft site permit for the proposed wind facility; and (2) requested that the scope of the EIS include two alignment alternatives, one route segment alternative proposed by DOC EERA, and a variation to the DCW's proposed routes that would parallel either the existing 69 kV line or the railroad corridor along the existing 161 kV line through the cities of Dodge Center, Kasson, and Byron.

On April 25, 2019, DOC EERA issued the EIS Scoping Decision.

On July 22, 2019, the LIUNA filed with the administrative law judge (ALJ) a Motion to Compel Discovery and Extend Deadlines for Submission of Pre-Filed Testimony. The initial discovery request sent to DCW by LIUNA on July 5, 2019, requested: 1) detailed anticipated labor and subcontractor requirements (*i.e.*, job classifications, job position descriptions, required number of workers, minimum company qualifications for each position); 2) completed and planned efforts to recruit a local construction workforce; and 3) Next Era's (DCW's parent company) past practices constructing wind projects in the upper Midwest and the feasibility of employing a majority-local workforce.

On July 29, 2019, DOC DER issued the Draft EIS.

On August 7, 2019, the ALJ issued an order denying LIUNA's July 22 Motion. The ALJ concluded that LIUNA did not show that its discovery requests were necessary to the presentation of its case. The ALJ also explained that LIUNA's representation by an unlicensed member of the

Minnesota Bar may run afoul of Minn. Stat. § 481.02, and warned LIUNA that it may not be represented in the proceedings by a non-attorney.¹

On August 14, 2019, DCW filed with the Commission a Request to Withdraw its Application for a Route Permit. On that same day, DCW also filed a motion with the ALJ requesting that the ALJ suspend the procedural schedule of the three combined dockets. DCW indicated that the withdrawal request and the motion to suspend were the result of learning of the significant interconnection costs applicable to the proposed project that resulted from the interconnection analysis conducted by the Midcontinent Independent System Operator (MISO). In response to the results of the interconnection analysis, DCW explained that it no longer intended to construct the 345 kV HVTL proposed in its June 2018 route permit application.

On August 20, 2019, DOC EERA staff conducted afternoon and evening Draft EIS and public information meetings in Kasson, Minnesota. However, because of DCW's August 14 route permit application withdrawal request and motion to suspend proceedings, DOC EERA staff used the meetings as an opportunity to inform the public: (1) of the project's status; and (2) that the Draft EIS process will be halted until there is a more certain understanding of the procedural process moving forward.²

On August 21, 2019, LIUNA filed with the ALJ a request to certify its July 22 Motion and the ALJ's related August 7 Order to the Commission for further review.

On August 29, 2019, the Commission filed a notice that requested the ALJ certify the consolidated matter back to the Commission.

On August 30, 2019, LIUNA filed with the Commission an objection to DCW's August 14 Request to Withdraw Route Permit Application.³

On August 30, 2019, the ALJ issued an order that (1) granted DCW's August 14 Motion to Suspend Procedural Schedule; and (2) certified the consolidated matter back to the Commission.

¹ See Footnote 1 of August 8 OAH Order on Motion to Compel.

² DOC EERA filed a Notice of Close of Comment Period on Draft Environmental Impact Statement on August 19, 2019. The notice also indicated that the Draft EIS meetings would focus more on the recent changes to the project status. *See also*, DOC EERA letter filed on August 27, 2019.

³ LIUNA's objection to DCW's withdrawal request was filed two days after the 14 day period to file objections under Rule had expired.

On September 5, 2019, LIUNA filed with the Commission a Request to Consider Motions to Compel Discovery and Reverse Prohibition on Representation of LIUNA Minnesota and North Dakota by a Non-Attorney. The request refers to LIUNA's July 22 Motion that was previously filed with and denied by the ALJ.

On September 6, 2019, DCW filed revised certificate of need and site permit applications for the proposed Dodge County Wind facility project. The applications no longer included the 21- to 26-mile 345 kV transmission line originally proposed or any other transmission line necessary to interconnect the proposed facility to the transmission system.

On September 13, 2019, the Commission issued a notice requesting comments on (1) DCW's request to withdraw its route permit application; (2) the Commission's authority to consider a certificate of need for a proposed electric power generating plant that does not include associated transmission lines necessary to interconnect the plant to the transmission system; (3) the procedural actions the Commission should take concerning the revised certificate of need and site permit applications; and (4) LIUNA's request that the Commission consider its Motion to Compel Discovery and Reverse Prohibition on Representation of LIUNA Minnesota and North Dakota by a Non-Attorney. Initial comments were accepted until September 27, 2019, and reply comments until October 4, 2019. Initial comments were received by Department of Commerce Division of Energy Resources (DOC DER), DOC EERA, and DCW. Reply comments were received by DCW and LIUNA.

On October 15, 2019, DCW filed a Second Revised LWECs Site Permit Application in response to recommendations made by DOC EERA on September 27.

On October 31, 2019, LIUNA filed supplemental reply comments.

IV. STATUTES AND RULES

A. Withdrawal of Filings

Under Minn. R. 7829.0430, the Commission's Executive Secretary has the authority to approve the withdrawal of a filing if the following conditions are met:

- The party that submitted the filing has requested that the filing be withdrawn and has served notice on the persons listed on the official service list;
- No person has expressed opposition to withdrawal of the filing within 14 days of service of the notice; and

- No Commissioner or Commission staff person has identified a reason that the matter should not be withdrawn.

If any person opposes a withdrawal request within 14 days of service, the Commission, before allowing the filing to be withdrawn, must determine that the withdrawal:

- Does not contravene the public interest;
- Does not prejudice any party; and
- Does not concern a filing that raises issues requiring commission action.

If the Commission determines that withdrawal would contravene the public interest or would prejudice a party, the Commission may permit withdrawal only subject to conditions that mitigate the harm identified.

B. Certificate of Need Applications for Large Energy Facilities

Under Minn. Stat. § 216B.2421, subd. 2(1), a large energy facility for purposes of a certificate of need application is defined as, “any 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.”

V. REQUEST TO WITHDRAW ROUTE PERMIT APPLICATION

In its August 14 Request to Withdraw Application for a Route Permit, DCW indicated that it has withdrawn from its MISO queue position (No. J441) due to the significant interconnection costs associated with the project. For that reason, DCW explained that it no longer intended to construct the transmission line as proposed in its route permit application. Consequently, DCW requested Commission approval under Minn. R. 7829.0430, to withdraw the application from further consideration. DCW further indicated it would make the necessary filings when it identifies an interconnection plan for the proposed project and anticipated making such filings no later than spring 2020.

On August 30, 2019, LIUNA filed an objection to DCW’s withdrawal request indicating it has concerns over how the withdrawal would affect the proceedings moving forward and its opportunity to fully participate. Subsequently, on October 31, 2019, LIUNA filed supplemental reply comments advising that it had reached an understanding with DCW and that it no longer objects to the withdrawal of the route permit application.

DOC DER and DOC EERA did not take a position concerning DCW's request to withdraw its route permit application. No other comments were received related to the withdrawal request.

VI. REVISED CERTIFICATE OF NEED AND SITE PERMIT APPLICATIONS

On September 6, 2019, in connection with the request to withdraw the route permit application, DCW filed a revised certificate of need application and a revised site permit application. The revised applications no longer included references to and information on the originally proposed 345 kV transmission line or any other transmission line necessary to interconnect the proposed facility to the transmission system.

A notice was issued by the Commission that requested comments on the issues below that relate to the revised applications and review process. Comments were received from DOC DER, DOC EERA, DCW, and LIUNA⁴.

- 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 an environmental report be developed?
 - Should the joint contested case proceeding continue when appropriate?
 - Should the Commission authorize review of the revised certificate of need application under the informal process?

⁴ Comments by LIUNA included (i) initial comments submitted two days after the close of the comment period indicating it had already provided extensive comment into the record and (ii) reply comments submitted three days after the close of the comment period requesting an extension to the comment period. Staff determined that an extension of the comment period was not warranted.

- Should the Commission restart the application review process, and if so, at what stage (application completeness, public information and scoping meeting, or public hearing)?

A. DOC DER Comments

In its September 27 Comments, DOC DER recommended that the Commission suspend the proceedings until DCW files a complete revised certificate of need application that includes a proposal for associated facilities that would enable the proposed project to interconnect to the transmission system. DOC DER also advised that the revised application should conform to the requirements set forth in Minn. R. 7849.0240, 7849.0250, and 7849.0270 to 7849.0340, and the Commission’s July 7 Order concerning exemptions.

DOC DER reasoned that “a proposed large generating facility’s ability to interconnect to the transmission system is a material and necessary . . . because energy generated from a large energy facility must be deliverable in order to be used.” DOC DER further opined that “if the output of a proposed project cannot be delivered to load, the need for the project would be highly questionable.” DOC DER also could not recall an instance when the Commission has considered a certificate of need application for a large energy facility that did not connect to the transmission system. Lastly, DOC DER maintained that without information on the interconnection facilities, the Commission would be unable to properly assess the costs and impacts of those facilities in its assessment of need.

Concerning the September 6 revised certificate of need application, DOC DER did not find the application to be complete under the rules. Specifically, DOC DER argued that the 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.” DOC DER advised that the review process should be restarted at the application completeness phase once a revised certificate of need application is filed; this would allow the Commission to better decide the appropriate review process given the new information.

B. DOC EERA Comments

In its September 27 Comments, DOC EERA explained that it did not find the September 6 Revised Site Permit Application complete and recommended that DCW file a complete revised site permit application containing all appendices and incorporating information developed in

the July 29 Draft EIS. Specifically, DOC EERA stated that the revised site permit application should be entirely updated to represent the project DCW intends to construct including:

- All appendices representing the project as proposed by DCW.
- An updated schedule.
- Updated information on the status of the power purchase agreement.
- A discussion of potential mitigation measures to minimize impacts from turbine lighting.
- A discussion of potential impacts to aerial agricultural application operations from the project and mitigation measures to minimize impacts.
- Updated text incorporating July 2019 Draft ABPP [Avian and Bat Protection Plan] (Appendix G in Draft EIS) and inclusion of Draft ABPP as an appendix in complete application.
- An expanded discussion of potential stray voltage impacts and mitigation related to livestock.
- Updated information on anticipated work force, consistent with the information provided in DCW's filing of September 13, 2013, and a more robust discussion of the impact of the project on the local economy.
- Updated information on decommissioning, consistent with, or updated if appropriate, the draft Decommissioning Plan shown in Appendix F of the Draft EIS.
- Cost information that either incorporates or updates DCW's estimate provided in response to the Department's Data Request (Draft EIS, Section 3.1.2).

DOC EERA reasoned that the record of the proceeding would benefit from having one comprehensive application that represents the project DCW intends to build rather than the multiple and different applications that currently exist (June 2018, January 2019, and September 6, 2019).

Concerning the review process moving forward, DOC EERA explained that because the project no longer included the originally proposed 21- to 26-mile 345 kV transmission line there is no longer a nexus for a mandatory EIS or contested case hearing. DOC EERA also noted that under Minn. R. ch. 7854, an LWECs site permit does not require a separate environmental review document, as that information is a requirement of the application.⁵ In addition, DOC EERA noted that a contested case is not required under the wind rules, but may be requested by any person under Minn. R. 7854.0800, subp. 5. Lastly, DOC EERA pointed out that the certificate of need application may move forward informally or through contested case proceedings and requires the preparation of an ER and not an EIS. Consequently, DOC EERA recommended that

⁵ See Minn. R. 7854.0500, subp. 7.

the application review process start with scoping of the environmental report (ER), given the changes in the project, the time lag between the scoping meetings and scoping comment periods, and the closure of the comment period on the draft EIS.

C. Dodge County Wind Comments

In its September 27 Comments, in addition to its request to withdraw the route permit application, DCW also requested that the Commission accept the revised September 6 Certificate of Need and Site Permit applications and refer the cases back to OAH to continue review with an updated procedural schedule. DCW indicated that it would not object to continuing under the previous contested case process so that the case may be heard and decided in a timely manner.

DCW maintained that the revisions to the certificate of need and site permit applications are minimal and do not impact the completeness of the applications. DCW argued that the revisions do not warrant re-starting the review process.⁶ Revisions include:

- Eight alternative turbine locations with sound and shadow flicker analysis and updated maps.
- Additional information on the need for the wind project due to the potential change in power purchaser.
- Removal of information related to the originally proposed transmission line interconnection and information that the necessary applications for a transmission interconnection will be filed at a later date.

Concerning Commission authority to review of the revised certificate of need application, DCW maintained that the Commission has the authority to review the certificate of need application for the LWECS project separately from reviewing a future certificate of need application for a project transmission line and interconnection point. DCW argued that (1) there is no legal requirement for simultaneous review of separate certificate of need applications for a wind project and an associated transmission line; (2) the criteria concerning need focus on the renewable resource and alternatives to that resource, not the point of interconnection or the need for the transmission gen-tie; and (3) DCW intends on filing a certificate of need application and route permit application for a transmission line and point of interconnection sometime in the future.

⁶ DCW filed a revised site permit application on October 15, 2019, in response to DOC EERA's September 27 Comments.

Concerning the status of the EIS, DCW agreed with DOC EERA that the EIS is no longer relevant because the requirement for an EIS was the high-voltage transmission line which is no longer being applied for at this time. DCW suggested that continued utilization of the existing EIS may lead to public confusion; the routes evaluated may be inapplicable; and the voltage and length of new proposed transmission line may differ and may not require an EIS. DCW instead requested that the Commission authorize preparation of an ER for the site permit.⁷

VII. LIUNA'S MOTION TO COMPEL

On September 5, 2019, LIUNA filed a motion requesting that the Commission “consider and act” on the ALJ’s August 7, 2019 Order on [LIUNA’s July 22] Motion to Compel. The ALJ’s August 7 Order (i) denied LIUNA request to compel discovery; and (ii) in a footnote, advised that representation by an unlicensed member of the Minnesota Bar may run afoul of Minn. Stat. § 481.02, and warned LIUNA that it may not be represented in the proceedings by a non-attorney.

Subsequently, in its October 31 Supplemental Reply Comments, LIUNA stated that it “withdraws all discovery requests in this proceeding since the information requested has been superseded by Applicant’s commitments to employ local labor.” In addition, LIUNA continued to request that the Commission provide guidance on the ALJ’s advisement concerning the matter of party representation in a contested case proceeding.

For more detailed information related to this specific matter, the Commission should review the related reply and response documents listed below (these documents are also identified in the relevant documents section of the briefing paper):

- *July 22, 2019 Motion of LIUNA to Compel Discovery and Extend Deadlines for Submission of Pre-Filed Testimony (Document IDs: [20197-154551-01](#), [-04](#), [-07](#), [-10](#), [-13](#), [-16](#), [-19](#), [-22](#), [-25](#), [-28](#), and [20197-154552-02](#)).*
- *July 26, 2019 DCW Reply to LIUNA Motion to Compel (Document ID: [20197-154703-01](#)).*
- *August 2, 2019 LIUNA Response to DCW Reply (Document IDs: [20198-154904-01](#) and [-04](#)).*
- *August 7, 2019 OAH Order on Motion to Compel (Document ID: [20198-155010-03](#)).*

⁷ Staff notes that the requirement to prepare an ER is tied to the certificate of need application, not the site permit application. Environmental review for a LW ECS is satisfied by information required in the site permit application (Minn. R. 7854.0500, subp. 7).

VIII. STAFF DISCUSSION

At this time, there are three applications before the Commission for the proposed Dodge County Wind Project:

- A certificate of need application for the proposed Dodge County Wind LWECS facility.⁸
- A site permit application for the proposed Dodge County Wind LWECS facility.⁹
- A route permit application for a 21- to 26-mile 345 kV transmission line necessary to interconnect the LWECS facility to the transmission system.¹⁰

The ALJ, in response to a motion by DCW, suspended the combined contested case proceeding and, in response to a request from the Commission, certified the combined contested case back to the Commission.

Staff believes the Commission needs to decide the issues identified below that are directly related to the procedural requirements of the three applications in this case. A decision on one issue may impact subsequent decisions or even nullify the need for subsequent decisions. For example, if the Commission allowed the withdrawal of the route permit application there would be no transmission line necessary to interconnect the LWECS facility to the transmission system; therefore, the Commission would need to decide its authority to consider the revised certificate of need application and/or decide whether the certificate of need application is substantially complete. Depending on that decision the Commission could decide to suspend review of the application until a complete application is filed. Alternatively, the Commission could refer the revised certificate of need and site permit applications back to the OAH to

⁸ The certificate of need application was originally filed on June 29, 2018 for the large wind energy conversion system and high-voltage transmission line. The application was revised by DCW on January 18, 2019 to reflect changes made to the project layout and turbines. The application was later revised on September 6, 2019 to remove reference to a 21- to 26-mile 345 kV transmission line necessary to interconnect the proposed facility to the transmission system.

⁹ The site permit application was originally filed on June 29, 2018 for the LWECS. The application was revised by DCW on January 10 and 18, 2019 to reflect changes made to the project layout and turbines. The application was later revised on September 6, 2019 to remove reference to a 21- to 26-mile 345 kV transmission line necessary to interconnect the proposed facility to the transmission system. DCW submitted a third revised application (fourth version of application) on October 15, 2019, in response to comments filed by DOC EERA.

¹⁰ The route permit application was originally filed on June 29, 2018 for the 345 kV transmission line. DCW filed a request to withdraw the route the route permit application with the Commission on August 14, 2019.

continue the contested case, or take some other action deemed appropriate. Questions the Commission should consider include:

- Whether to allow DCW's request to withdraw its high-voltage transmission line route permit application.
- Whether the Commission has 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)?
- If the Commission determines it has the authority to continue the review of the revised certificate of need application, does the revised application contain the information required by parts 7849.0240, 7849.0250, and 7849.0270 to 7849.0340?
- If the Commission determines it has the authority to continue the review of the revised site permit application, does the revised site permit application contain the information required by Minn. R. 7854.0500?
- If the certificate of need and site permit applications are determined to be substantially complete, what is the appropriate procedural process for reviewing the revised applications? Staff believes the Commission could:
 - Refer the revised certificate of need and site permit applications back to OAH and continue the joint contested case proceeding and make the necessary corrections to the November 1, 2018 Notice and Order for Hearing.
 - Authorize review of the revised certificate of need application under the informal process and the site permit application under the process outlined under Minn. R. ch. 7854.
 - Make a determination on what process step the review of the applications should begin at or continue from (application completeness, public information and scoping meeting, or public hearing)?
 - Request continued development of the EIS and make the necessary corrections associated with the withdrawal of the transmission line or request the preparation of an ER?

A. Request to Withdraw Route Permit Application

DCW has indicated that it no longer intends to construct the transmission line as proposed in its route permit application. No person or party has expressed opposition to withdrawal of the filing¹¹ and Commission staff has not identified any reason that the withdrawal request should not be granted. For those reasons, staff believes it is appropriate to allow withdrawal of the transmission line route permit application.

B. Commission 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

Staff agrees with the recommendation of DOC DER that the Commission should suspend the proceedings until DCW files a complete revised certificate of need application that includes a proposal for associated facilities to enable the proposed project to interconnect to the transmission system. Staff agrees that a determination of need becomes questionable if the proposed project cannot deliver output to load; and the costs, impacts, and benefits of interconnection are not available. Staff further agrees with DOC DER that the review process should begin at the application completeness phase once a revised certificate of need application is filed.

C. Completeness of the revised certificate of need and revised site permit applications

Should the Commission conclude that it will review the revised certificate of need and site permit applications, it should determine if the applications continue to be substantially complete after the proposed changes to the project.

1. Revised Certificate of Need Application

Staff agrees with DOC DER that the certificate of need application is not complete and the review process cannot begin until the Applicant has determined what associated facilities would be needed to interconnect the Project to the transmission system and can identify a specific purchaser or otherwise plausibly demonstrate a regional need for renewable generation.

¹¹ LIUNA initially objected to the withdrawal but has since retracted its objection.

2. Revised Site Permit Application

DCW filed a second revised site permit application on October 15 in response to recommendations made by DOC EERA in its September 27 comments. In those comments, DOC EERA recommended that DCW file a complete updated site permit application containing all appendices and incorporating information developed in the draft EIS that represents the project it intends to build.¹² Upon DCW filing a complete updated site permit with the identified additional information, DOC EERA recommended that the Commission accept the application as complete.

Staff has reviewed the October 15 Revised Site Permit Application and while the updated information appears to be included with the exception of information on a PPA, staff does not know whether the information satisfies the concern expressed by DOC EERA. Furthermore, even if the site permit application can be considered substantially complete, staff notes that the statute requires the Commission to issue a certificate of need for a large energy facility before it makes a decision on a site permit. Therefore, unless the Commission determines the certificate of need application can be reviewed with no interconnection to the transmission system and that the information in the application is substantially complete, any future decision on a site permit for the proposed project would need to be provisional and conditioned on issuance of a certificate of need and likely an identified and permissible transmission system interconnection.

D. Procedural Process

Staff agrees with DOC DER that the Commission should suspend the proceedings. However, staff believes the current dockets should be indefinitely suspended without prejudice and the associated docket numbers closed. New docket numbers can be opened upon DCW filing a comprehensive and complete revised certificate of need application for the project it intends to build that includes a proposal for associated facilities to enable the proposed project to interconnect to the transmission system; and a site permit application updated with the matching information on the transmission system interconnection as well as information on a power purchase agreement or some other enforceable mechanism for sale of the power. The site permit should also include the information recommended by DOC EERA in its September 27 comments, if the October 15 revised application does not already do so.

¹² See Section VI.B of these briefing papers and DOC EERA's September 27 Comments at p. 4-5.

At this time there are three versions of the certificate of need application and four versions of the site permit application in the record. The applicant has made significant changes to the project twice during the review process to-date. Because of the number of changes to the proposed project, the record of the proceedings and the environmental review document (in this case the EIS) are confusing and inaccurate. Staff believes continuing the review of applications for an incomplete and inadequate project will adversely affect the public interest, and may possibly conflict with Minnesota Statute.

E. LIUNA's September 5 Motion

Because LIUNA has indicated that it is no longer seeking an order to compel discovery and has withdrawn its previous requests, the Commission no longer needs to consider this matter.

LIUNA is still requesting Commission guidance on the ALJ's advisement in his August 7 Order concerning the matter of party legal representation in a contested case proceeding. Staff makes no recommendation on this matter and instead points to some rules and statutes below that may be relevant. Staff also points out that the rules in question are the rules of the Office of Administrative Hearings (OAH), not the Commissions. The combined dockets were under the jurisdiction of the OAH, therefore, it is not clear what authority the Commission has concerning another agencies rules and orders. The Commission may want to consult counsel on this matter.

- Minn. Stat. § 481.02 Unauthorized Practice of Law
- Minn. R. 1405.0200, subp. 2-4 Definition of Intervenor, Party, and Person
- Minn. R. 1400.5800 Right to Counsel
- Minn. R. 1405.0600 Right to Counsel
- Minn. R. 1405.0800 Public Participation
- Minn. R. 1405.0900 Intervention as a Party

COMMISSION DECISION OPTIONS

A. Request to Withdraw High-voltage Transmission Line Route Permit Application

1. Deny the request to withdraw.
2. Grant the request to withdraw.
3. Close the associated record and docket number.
4. Take some other action deemed more appropriate.

B. Completeness of Revised Certificate of Need Application

1. Accept the September 6 revised certificate of need application as substantially complete.
2. Accept the September 6 revised certificate of need application as substantially complete conditioned on the refiling of an application with a proposal for associated facilities to enable the project to interconnect to the transmission system.
3. Reject the revised certificate of need application, suspend the current proceedings, and require the applicant to refile a comprehensive and complete certificate of need application that includes a proposal for associated facilities to interconnect the project to the transmission system.
4. Close the associated record and docket number without prejudice.
5. Take some other action deemed more appropriate.

C. Completeness of Revised Site Permit Application

1. Accept the October 15 revised site permit application as substantially complete.
2. Accept the October 15 revised site permit application as substantially complete conditioned on the refiling of an application with a proposal for associated facilities to enable the project to interconnect to the transmission system.
3. Reject the revised site permit application, suspend the current proceedings, and require the applicant to refile a comprehensive and complete site permit application that includes a proposal for associated facilities to interconnect the project to the transmission system.
4. Close the associated record and docket number without prejudice.
5. Take some other action deemed more appropriate.

D. Procedural Process

1. Refer the certificate of need and site permit applications back to the OAH to continue the joint contested case proceedings and amend the November 1, 2018 Notice of and Order for Hearing to reflect the changes accordingly.
2. Authorize review of the certificate of need application under the informal review process (Minn. R. 7829.1200).
3. Authorize review of the site permit application under Minn. R. ch. 7854.
4. Restart the certificate of need and site permit application review processes at the application completeness stage and request DOC DER and DOC EERA to file letters confirming completeness of the refiled applications as appropriate and approve joint public hearings and combined environmental review to the extent practical.
5. Appoint an ALJ to serve as the hearing examiner and request preparation of findings of fact, conclusions of law, and recommendation of a preferred site and permit conditions. Request that the ALJ determine the schedule for any testimony and post-hearing briefing in consultation with interested parties, as necessary.
6. Request DOC EERA to prepare an environmental report.
7. Take some other action deemed more appropriate.

E. LIUNA September 5, 2019 Motion to Compel

1. Take no action on the motion.
2. Take some other action deemed more appropriate.

Staff Recommendation: A2, B3, B4, C3, C4, and E1

If the Commission decides on B1 or B2 and C1 or C2, then staff recommends D2-6 and E1.