

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**COMMENTS AND RECOMMENDATIONS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS**

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

Date

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In the Matter of the Application of Flying Cow Wind, LLC for a Large Wind Energy Conversion System (LWECS) Site Permit for the 152 MW Bitter Root Wind Project in Yellow Medicine County, Minnesota.

Issue(s) Addressed: These comments address whether the Commission should issue a Draft Site Permit (DSP) for the Bitter Root Wind Project, and what conditions are necessary in the DSP should the Commission issue one for this project.

Documents Attached

1. Preliminary Draft Site Permit

Additional documents and information can be found on the EERA website <https://mn.gov/commerce/energyfacilities/Docket.html?Id=34766> or on eDockets <https://www.edockets.state.mn.us/EFiling/search.jsp> (Year "17" and Number "749").

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Introduction and Background

Flying Cow Wind, LLC (Applicant) filed a Site Permit Application (SPA) with the Public Utilities Commission (Commission) for a Large Wind Energy Conversion System (LWECS) project on November 9, 2017, to build the Bitter Root Wind Project (Project) in Yellow Medicine County, Minnesota.¹

Flying Cow Wind, LLC is a wholly-owned subsidiary of Renewable Energy Systems Americas Inc. (RES). RES, through its affiliates, develops renewable energy projects throughout the United States and Canada. RES is one of the top renewable energy companies in North America. The RES Group has constructed over 160 renewable energy projects with a global portfolio that exceeds 12 gigawatts. RES has been active in North America since 1997, has a renewable energy and energy storage construction portfolio that exceeds 10,000 MW and over 100 projects, and has constructed more than 1,000 miles of overhead transmission lines.

The Applicant has indicated they are pursuing approval of a Certificate of Need (CN) for the Project, and the CN application was filed with the Commission on October 19, 2017. The CN process and application for the Bitter Root Wind Project was assigned Docket number IP6984/CN-17-676.

Project Location

Canby is the closest community to the Project. Portions of the Project are located in Florida, Fortier, and Norman Townships in Yellow Medicine County. The proposed Project is located in a portion of the state that has seen extensive development of LWECS over the past 10 years.

Project Description

The Project Boundary encompasses approximately 22,888 acres, of which approximately 21,000 acres are currently leased for the Project. The November 9, 2017, original project design called for:

1. A wind turbine layout consisting of up to 37 turbines, depending on turbine specifications; the application described the use of Vestas V136 (3.45 MW and 4.2 MW) wind turbines; and
2. Associated facilities, including gravel access roads, an electrical collection system, temporary and permanent meteorological towers, a Project substation facility, an interconnection facility, a temporary batch plant for construction, a temporary staging/laydown construction area, and an operations and maintenance (O&M) facility.

On March 28, 2018, the Applicant submitted an addendum to the site permit application providing information regarding certain changes to the Project since the Application was filed on November 9, 2017; these changes were necessitated due to turbine and land availability.²

¹ Site Permit Application and associated Figures and Appendices, Bitter Root Wind Project, Main Document of Site Permit Application, eDocket #201711-137275-01 to -10 and 201711-137275-01 to -10

² Addendum to the Site Permit Application, Bitter Root Wind Project. eDocket No.20183-141493—01 to -10

The Addendum to the Site Permit Application for the Bitter Root Wind Project provided a revised layout for the site. The Project layout in the original SPA included 37 turbine locations and 3 alternate locations (five 3.45 MW and thirty-two 4.2 MW turbines). The Applicant no longer plans to utilize any Vestas V136 4.2 MW turbines, but still plans to permit a Project nameplate capacity of approximately 152 MW. Accordingly, the revised Project layout contained within the Addendum includes 44 turbine locations and 8 alternate locations, all utilizing the Vestas V136 3.45 MW turbine. In addition to identifying 7 new turbine locations, the revised Project layout will also include adjustments to other turbine locations to allow for the new turbine locations and adjust for changes in land availability. All locations in the revised Project layout, however, are within the Project boundary identified in the original SPA, which remains unchanged.

The Applicant's goal is to commence commercial operation of the Project in the fall of 2019.

Regulatory Process and Procedures

A Site Permit from the Commission is required to construct an LWECS, which is any combination of wind turbines and associated facilities with the capacity to generate five megawatts or more of electricity. This requirement became law in 1995. The Minnesota Wind Siting Act is found at Minnesota Statutes Chapter 216F. The rules to implement the permitting requirements for LWECS are in Minn. Rule 7854. The first two steps in the permitting process are 1) SPA Acceptance and 2) Issuing of the Draft Site Permit.

Application Acceptance

Application acceptance is guided by Minnesota Rule 7854.0600. The Commission may elect to accept, conditionally accept, or reject the Application. If the Commission conditionally accepts or rejects an application, the Commission must advise the Applicant of the deficiencies in the application and the manner in which the deficiencies can be addressed.

Within 15 days of LWECS site permit application acceptance, the Applicant is required to provide notice of application acceptance. In addition to publishing this notice in a newspaper of general circulation in each county, the notice is distributed to the county board, each city council and each township board in each county where the LWECS is proposed to be located. This notice is also posted on eDockets. In practice this notice has been developed by the Applicant with assistance from EERA staff to ensure that the notice meets the requirements and intent of Minnesota Rule 7854.0600.

As a part of the notice requirements of Minnesota Rule 7854.0600, the Applicant must provide a copy of the accepted Application to each landowner within the site. The Applicant is also required to distribute the accepted application to the Minnesota Historical Society, the regional development commission(s) within which the LWECS is proposed to be located, the auditor of each county, and the clerk of each city and township in which the LWECS is proposed to be located. The auditors and clerks are to retain the application and make it available for public inspection on request. The Applicant is responsible for maintaining the application distribution list.

Once the SPA is determined to be complete, EERA staff distributes copies of the application to technical representatives from state agencies (e.g., Pollution Control Agency, Department of Natural Resources, Department of Transportation, Board of Water and Soil Resources, Department of Agriculture, and Department of Health) that may have “downstream” permitting or review authority over aspects of the project and to solicit comments for consideration from state agency reviewers for conditions in a Draft Site Permit (DSP), and if applicable (CN docket), issues to be considered in scoping for an Environmental Report (ER) for the Bitter Root Wind Project.

The Commission accepted the Site Permit Application as complete on January 4, 2018.³

Preliminary Determination on Draft Site Permit

Minnesota Rule 7854.0800 states, “Within 45 days after acceptance of the application by the Commission, the Commission shall make a preliminary determination whether a permit may be issued or should be denied. If the preliminary determination is to issue a permit, the Commission shall prepare a draft site permit for the project. The draft site permit must identify the permittee, the proposed LWECS, and proposed permit conditions.”

Issuing a draft site permit does not confer an authority to construct an LWECS. The Commission may change, amend or modify the draft site permit in any respect before final issuance or may deny the site permit at a later date.

The Commission’s January 30, 2018 Order waived the 45 day requirement of the rule in order to allow time for public comments and state and federal agencies input on the content of the Draft Site Permit (DSP).

Public and Agency Participation

A public meeting was held on February 27, 2018, in Canby to receive comments on the scope of the environmental report (CN docket) and to solicit public comment on the DSP (Site Permit docket).⁴ Approximately 100 persons attended the meeting. A public comment period followed the meeting; the comment period closed on March 19, 2018. Seventeen members of the public commented during the Public Meeting. Forty two written comments were received during the comment period.⁵

Public comments, both oral and written, included remarks on where turbines would be located (which landowners would be selected for siting); would transmission lines be required (in this case transmission and a connection to the grid occur in South Dakota); where does the power from the project go (a final off-take agreement is not yet in place); government subsidies for the producer (Production Tax Credit); and potential impacts of the proposed Project on wildlife and livestock, human health, property values, aesthetics/visual, aviation, and recreation.

³ Commission Order, dated January 30, 2018, Accepting Bitter Root Wind Project SPA, eDocket No. 20181-139534-01

⁴ Notice Public Information and Scoping Meeting, February 2, 2018. eDocket No.20183-139712-02

⁵ <https://mn.gov/commerce/energyfacilities//resource.html?id=34792>

Four state agencies submitted written comments; the Minnesota Pollution Control Agency (MPCA), the Minnesota Department of Natural Resources (MNDNR), the Minnesota Department of Transportation (MNDOT), and the Department of Commerce – Division of Energy Resources (DER).

No member of the public or any state agency recommended system or project alternatives to be considered in the Environmental Report.

Due to the filing of the Addendum to the Site Permit Application for the Bitter Root Wind project the public comment period was extended to April 13, 2018.⁶

Sixteen additional written comments were received during the extended comment period, including a supplemental comment letter from the MNDNR.⁷ The majority of comments received from the general public were either expressions on the project itself (pro or con) or raised specific issues of concern (i.e., property values, aesthetics, noise, etc.).

EERA Staff Analysis and Recommendations

EERA recommends that the Commission issue a Draft Site Permit (DSP) to Flying Cow Wind, LLC for the Bitter Root Wind Project.

EERA staff has prepared a preliminary DSP (PDSP), identifying the Permittee, the proposed LWECS, and additional proposed permit conditions. The PDSP is attached to these Comments and Recommendations. Commission approval and release of a DSP will initiate a formal public comment period and a Public Hearing.

The PDSP maps illustrate the turbine (and eight alternate) locations as proposed by the Applicant; it is EERA's understanding that individual turbines may be deleted and/or substituted with alternates as additional information becomes available and the process moves toward a final site permit decision.

EERA staff has taken public comments and agency comments into consideration during the development of the PDSP.

The majority of comments received during the public comment periods were either expressions on the project itself (pro or con) or raised specific issues of concern (i.e., property values, aesthetics, noise, etc.); the latter are items, as required by Minnesota Rule 7854.0500, Subpart 7, that are included in the Bitter Root Wind Project LWECS Site Permit Application. Additionally, since the Bitter Root Wind project also requires a Certificate of Need determination, these items will be included in the Environmental Report being prepared for that docket.⁸

⁶ Notice of Extended Comment Period, eDocket No. 20184-141655-01

⁷ <https://mn.gov/commerce/energyfacilities//resource.html?id=34792>

⁸ Environmental Report Scoping Decision for the Bitter Root Wind Project, eDocket 20184-142097-02

One item, resulting in a special condition recommendation in the PDSP, is the use of an aircraft detection lighting system (ADLS). The ADLS is designed to mitigate the impact of nighttime lights by deploying a radar-based system around a wind farm, turning lights on only when low-flying aircraft are detected nearby.⁹ A requirement to add this feature to the Bitter Root Wind Project appears in the PDSP in Section 6.1 *Obstruction Marking and Lighting*.

The Minnesota Pollution Control Agency comments centered on the need for additional information within the record concerning the potential impacts to surface waters and floodplain resources, along with information on avoidance, minimization, and mitigation (BMPs) of said impacts.¹⁰

Section 9.16 *Surface Water and Floodplain Resources* (pages 63 – 70) of the Site Permit Application (SPA) describes the surface waters (and significant designations) and floodplains, and the potential impacts to these features within the project boundaries. Section 9.14.3 *Mitigative Measures* [soils] (pages 58 to 59) of the SPA discusses examples of best management practices (e.g., containment of excavated soils, protection of exposed soil, stabilization/restoration of disturbed areas, silt fencing, and revegetation) that may be part of the Stormwater Pollution Prevention Plan (SWPPP) and NPDES/CSW permit that the Applicant will be submitting to the MPCA, which is required by the PSDP (Section 5.2.6 *Soil Erosion and Sediment Control* of the PDSP).

It is EERA's understanding that both the MPCA and U.S. Army Corps of Engineers permits (see SPA Table 35, pages 106-107, for a list of "downstream" permits and approvals) will contain additional information of best management practices for the protection of surface waters and wetlands within the project boundaries.

The Minnesota Department of Transportation stated in its comments that wind farm construction work, including delivery/storage of structures, materials and/or equipment that may affect MNDOT right of way is of concern such that MNDOT requests that it be involved in planning and coordinating such activities. Additionally, MNDOT stated that the site permit should include language specifying that the Permittee shall obtain all relevant permits from road authorities relating to the transport of oversize materials and equipment related to the project over public roads, as well as installation of facilities that may be proposed to occupy portions of public road rights of way. Further, MNDOT noted that, based on the information provided in the Site Permit Application, trunk highway (TH) 68 intersects the project area. A bridge on TH 68, east of project site area, is tentatively scheduled for replacement during the 2020 construction season, potentially impacting delivery of wind turbine components should the LWES construction phase extend beyond that which is planned.¹¹

⁹ <http://www.airporttech.tc.faa.gov/Download/Airport-Safety-Papers-Publications-Detail/dt/Detail/ItemID/563/PERFORMANCE-ASSESSMENT-OF-THE-LAUFER-WIND-AIRCRAFT-DETECTION-SYSTEM-AS-AN-AIRCRAFT-DETECTION-LIGHTIN>

¹⁰ Public Comment – MPCA, eDocket No. 20183-141199-03

¹¹ Public Comment – MNDOT, eDocket No. 20183-141199-07

MNDOT requested the Applicant coordinate with their staff to address potential impacts to public roads during the construction and operation phases of the project. Section 5.2.12 of the PDSP addresses this issue, and specifies coordination with the appropriate local and state agencies. EERA staff recommends the Applicant begin this coordination as soon as possible to allow for appropriate agency input.

MNDOT recommended that the DSP include language requiring the Permittee to obtain all other necessary permits and approvals. This is a typical condition in LWECS Site Permits, and has been included in Section 5.5.2 of the PDSP.

The Minnesota Department of Natural Resources (MNDNR) comments included a correction for the MNDNR contact (from Kevin Mixon to Cynthia Warzecha), edits to the Draft Bird and Bat Conservation Strategy Plan contained as an appendix to the Site Permit Application, and on the appropriateness of siting specific turbines (T1, T20, TA8, TA9, and T39). Additionally, the MNDNR informed the record that they may have further comments once the 2017 wildlife surveys have been filed.¹²¹³

MNDNR recommended several edits to the language contained within the Avian and Bat Protection Plan (aka, Bird and Bat Conservation Strategy) submitted for this project (SPA Appendix H Draft Bird and Bat Conservation Strategy, October 12, 2017); EERA concurs with the MNDNR's recommendations. Section 7.5 of the PDSP recognizes that the Avian and Bat Protection Plan/Bird and Bat Conservation Strategy is not a static document and is designed to be amended as new data is submitted into the record and reviewed, and from information gathered from incident reports (quarterly and/or immediate) and/or the annual audit reports.

MNDNR recommended that turbine T1 not be sited at the proposed location as it is located adjacent to a large wetland complex, and that one of the alternate turbine sites be used instead. MNDNR also recommended that turbine T20 not be sited at the proposed location as it is located adjacent to a forested tract greater than 12 acres (plus an additional 7 acres adjacent to that), and that one of the alternate turbine sites be used instead. MNDNR commented further that turbines TA8, TA9, TA10, and T39 are located around a large complex of habitat that contains wetlands, grassland, forested areas, and streams. The MNDNR believes that this larger block of habitat is likely to support a diverse assemblage of birds and bats, with turbine TA9 being especially problematic due to its adjacency to a forested patch. The MNDNR recommends that the Applicant should further explore how to locate turbines at other locations or farther away from the habitat.

Turbine siting discussions and Agency coordination will continue for the remainder of the site permit docket (Draft Site Permit review and comment, Public hearing and comment period, and in the development of the final ABPP). If agreement between the DNR and the Applicant cannot be reached on turbine locations, EERA staff will provide recommendations on the issue during the Public Hearing reply comment period.

¹² Public Comment – MNDNR, March 20, 2018. eDocket No. 20183-141199-05

¹³ Public Comment – MNDNR, April 13, 2018. eDocket No. 20184-141977-01

The MNDNR also noted that it appears that an access road and collector line have been proposed through the Fortier 24 Native Prairie Bank Easement; depending on construction methodology and specifics of said agreement, this may be inconsistent with the intent of the easement.

The Minnesota Department of Commerce – Division of Energy Resources recommended that the Commission make the following findings in the Flying Cow Wind, LLC (Bitter Root Wind project) application for a certificate of need docket (IP6984/CN-17-676):

- Flying Cow Wind (FCW) has met each of the five criteria listed under Minnesota Rules, part 7849.0120 A and thus shown that “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;”
- FCW has met each of the four criteria listed under Minnesota Rules, part 7849.0120 B and thus shown that “a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record;” and,
- FCW has shown that “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.”

EERA staff encourages the Applicant to continue to maintain open communication and correspondence with all local, state, and federal agencies to insure an effective project review process