

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben
Dan Lipschultz
Valerie Means
Matthew Schuerger
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Three Waters Wind Farm, LLC for a Site Permit for the up to 201 MW Large Wind Energy Conversion System in Jackson County, Minnesota

ISSUE DATE: December 23, 2019

DOCKET NO. IP-7002/WS-19-576

ORDER ACCEPTING APPLICATION, ESTABLISHING PROCEDURAL FRAMEWORK, AND VARYING RULES

PROCEDURAL HISTORY

On September 30, 2019, Three Waters Wind, LLC (Three Waters), filed a site permit application for its Three Waters Wind Project, a large wind energy conversion system¹ (LWECS or wind farm) including up to 71 wind turbines and related facilities. Three Waters filed occasional revisions to its application through October 22.

On October 3 and 22, 2019, the Commission issued notices establishing schedules for interested persons to file comments and replies regarding the application’s completeness.

On November 5, 2019, the Commission received comments on the application from the Energy Environmental Review and Analysis staff (EERA) of the Minnesota Department of Commerce (Department).

On November 12, 2019, Three Waters filed reply comments.

On December 12, 2019, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

Finding that Three Waters 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:

¹ See Minn. R. 7854.0100, subp. 7.

- Requesting that an administrative law judge conduct public hearings as set forth herein.
- Establishing additional procedural requirements.
- Varying rules to extend certain procedural timelines.
- Delegating administrative authority, including timing issues, to the Executive Secretary.
- Designating a public advisor.

II. The Three Waters Wind Project

Three Waters seeks a site permit for a wind farm with a generating capacity of up to 201 MW in Jackson County—specifically, in 48,087 acres southwest of Lakefield, in Jackson County’s Ewington, Round Lake, Sioux Valley, Rost, Hunter, and Minnesota Townships.² The Minnesota Municipal Power Agency (MMPA) signed a 30-year contract to buy the energy produced by the project.

Three Waters’s application includes a model estimating how much noise people near the project would hear from the wind farm’s operations. For purposes of this model, Three Waters assumes a ground absorption factor of 0.7 on a scale from 0.0 to 1.0—where 0.0 equals to the noise absorption level of pavement or ice, while 1.0 refers to the absorption level of tall grass or snow.

III. Jurisdiction

Before building a large wind energy conversion system—that is, a wind farm with a combined nameplate capacity of 5 MW or more—a developer must acquire a site permit from the Commission.³ Because Three Waters proposes to build a wind farm capable of generating 201 MW, it has applied for a site permit.

Minnesota Statutes chapter 216F and Minnesota Rules chapter 7854 set forth the criteria for granting a wind farm site permit.

Minn. R. 7854.0500 lists the information that a wind farm site permit must contain. Minn. R. 7854.0600, subp. 1, provides for the Commission to make a determination on the application’s completeness within 30 days of filing. Minn. R. 7854.0700 provides for the Commission, upon accepting an application for a site permit, to designate a staff person to act as the Public Advisor for the project. And Minn. R. 7854.0800, subp. 1, provides 45 days for the Commission to make a preliminary determination on issuing a draft site permit.

Minn. Stat. § 216F.05(3) and Minn. R. 7854.0900 provide for the Commission to convene a public hearing on a site permit application. The Commission may ask the Office of

² Three Waters states that it expects to erect additional wind turbines in an adjoining 11,000 acres in Osceola and Dickinson Counties in northern Iowa.

³ Minn. Stat. § 216F.01 and .04; Minn. R. Ch. 7854. Likewise, before constructing a large electric generating facility—that is, a plant or combination of plants capable of generating 50 MW or more—a developer must obtain a Certificate of Need from the Commission under Minn. Stat. § 216B.243, subd. 2, and Minn. R. 7849.0030. Consequently Three Waters has filed for a Certificate of Need. *See In the Matter of the Application for a Certificate of Need for the Up-to-201 Megawatt Three Waters Wind Farm, LLC in Jackson County*, Docket No. IP-7002/CN-19-154.

Administrative Hearings to assign an administrative law judge (ALJ) to preside over the hearing in accordance with Minn. R. Ch. 1405.

IV. Application Completeness

The EERA reviewed the application for completeness under Minn. R. 7854.0500 and concluded that the application provides sufficient information to begin the site permit review process. The EERA recommends that the Commission find the application substantially complete.

Having reviewed the application and the EERA's comments, the Commission concurs with the EERA that the application is substantially complete.

V. Review Process

A. Request Appointment of an Administrative Law Judge

The Commission finds that it cannot resolve all issues raised by the application on the basis of the record before it. The issues turn on specific facts that are best developed in proceedings conducted by an administrative law judge. The Commission will therefore request that an administrative law judge from the Office of Administrative Hearings conduct summary proceedings under Minn. R. 7850.3800 to facilitate development of the factual record.

The Commission will ask the administrative law judge to conduct the proceeding in the manner described below:

- Conduct the public hearing in accordance with Minn. R. 7850.3800, subps. 2 to 4, and, as the ALJ deems appropriate, with Minn. R. 1405.0500, .0600, .0800, .1900, and .2200.
- Clarify that interested persons may participate in this docket without intervening as a party. Parties to the proceeding are Three Waters and the EERA. Other persons may participate as public participants or as otherwise prescribed.
- Ask parties and other interested persons to address whether the proposed wind farm meets the criteria established under Minnesota Statutes chapter 216F and Minnesota Rules chapter 7854. In particular, Three Waters estimated the project's noise levels assuming a ground absorption factor of 0.7 on a scale from 0.0 to 1.0. While this assumption is not unprecedented,⁴ it is more common for wind farm

⁴ See *In the Matter of the Application of Blazing Star Wind Farm, LLC for a Site Permit for the up to 200 Megawatt Blazing Star Wind Project in Lincoln County*, Docket No. IP-6985/WS-16-686; *In the Matter of the Site Permit for the up to 200 MW Blazing Star 2 Wind Farm in Lincoln County*, Docket No. IP-6985/WS-17-700.

developers in Minnesota to assume a ground absorption factor of 0.5.⁵ The Commission welcomes further exploration of this issue.

- Establish the types of filings necessary to facilitate proper record development (i.e., testimony, briefs, reply briefs, proposed findings and site permit recommendations) and a schedule for submitting those filings through the scheduling of a prehearing conference in accordance with Minn. R. 1405.1100, as determined appropriate.
- Emphasize the statutory time frame for the Commission to make a final decision on the application and encourage Three Waters and other interested persons to adhere to a schedule that conforms to the statutory timeframe.
- Prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the wind farm site permit application, and provide recommendations, if any, on conditions and provisions of the proposed site permit.
- Direct that the hearing record be maintained through the Commission's electronic e-Dockets filing system.

B. Additional Procedural Requirements

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

- Delegate administrative authority, including timing issues, to its Executive Secretary.
- Ask the Department to continue studying the issues and indicate during the hearing process through testimony or comment its position on the reasonableness of granting a site permit.
- Require Three Waters to facilitate in every reasonable way the continued examination of the issues requested by the Department and Commission staff.

⁵ See *In the Matter of Lake Benton Power Partners II, LLC for a Site Permit Amendment for the 100.2 MW Lake Benton Wind II Repowering Project and Associated Facilities in Pipestone County*, Docket No. IP-6903/WS-18-179, Application Appendix C, at 6-4; *In the Matter of the Application of Buffalo Ridge Wind Energy, LLC for a Site Permit for the 109 MW Large Wind Energy Conversion System in Lincoln County*, Docket No. IP-7006/WS-19-394, Application Appendix C, at 6-5; *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*, Docket No. IP-6981/WS-17-307, Application Appendix D, at 6-4; *In the Matter of Freeborn Wind Energy LLC's Application for a Large Wind Energy Conversion System Site Permit for the 84 MW Freeborn Wind Farm in Freeborn County*, Docket No. IP-6946/WS-17-410, Site Permit Section 6.1.

- Require Three Waters to place a print or electronic copy of the site permit application in the government center or public library located closest to the proposed project site.
- Direct Three Waters to work with Commission staff and the ALJ to arrange for publishing visible display ads giving notice of the hearing in newspapers of general circulation at least ten days before the hearing, and to obtain proof that the newspapers published the notices.
- Direct that all noticing requirements in these matters provided for under Minnesota Statutes chapter 216F and Minnesota Rules chapter 7854 include delivery to all affected landowners. An affected landowner is any landowner or designee that is within or adjacent to the proposed LWECS site boundary.

VI. Request for 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 Timeline

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, Minn. R. 7854.0800, subp. 1, requires the Commission to make a preliminary determination regarding the issuance or denial of a draft site permit within 45 days of accepting the application. Forty-five days is not enough time to conduct a public information meeting, provide for a comment period on issues to be considered for inclusion in a draft site permit, prepare the draft permit, conduct Commission deliberations, and issue the draft 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 45-day timeframe would impose an excessive burden upon the Commission, the 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 45-day timeframe would serve 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 a variance to Minn. R. 7854.0800, subp. 1, to extend the timeline contained in the rule.

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 the site permit application of Three Waters Wind Farm, LLC, as substantially complete.
2. The Commission asks that an Administrative Law Judge from the Office of Administrative Hearings preside over the hearing, and asks the ALJ to take the following actions:
 - A. Conduct the public hearing in accordance with Minn. R. 7850.3800, subp. 2 to 4, and as the administrative judge determines appropriate, Minn. R. 1405.0500; 1405.0600; 1405.0800; 1405.1900; and 1405.2200.
 - B. Establish the types of filings necessary to facilitate proper record development (i.e., testimony, briefs, reply briefs, proposed findings and site permit recommendations) and a schedule for submitting those filings through the scheduling of a prehearing conference in accordance with Minn. R. 1405.1100, as determined appropriate.
 - C. Direct that intervention as a party is not required to participate in this docket. Interested persons may participate as public participants or as otherwise prescribed.
 - D. Emphasize the statutory timeframe for the Commission to make final decisions on the application and encourage Three Waters and others to adhere to a schedule that conforms to the statutory timeframe.
 - E. Ask interested persons to address whether the proposed wind farm meets the criteria established under Minn. Stat. Ch. 216F and Minn. R. Ch. 7854—including issues related to wind farm noise and the appropriate ground absorption factor to be used for modeling noise.
 - F. Prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the wind farm site permit application, and provide recommendations, if any, on conditions and provisions of the proposed site permit.
 - G. Direct that the hearing record be maintained through the Commission's electronic e-Dockets filing system.
3. The Commission delegates administrative authority, including timing issues, to its Executive Secretary.
4. The Commission asks the Department to continue studying the issues and indicate during the hearing process through testimony or comment its position on the reasonableness of granting a site permit.
5. Three Waters shall facilitate in every reasonable way the continued examination of the issues requested by the Department and Commission staff.

6. Three Waters shall place a print or electronic copy of the site permit application in the government center or public library located closest to the proposed project site.
7. Three Waters shall work with Commission staff and the ALJ to arrange for publishing visible display ads giving notice of the hearing in newspapers of general circulation at least ten days before the hearing, and shall obtain proof that the newspapers published the notices.
8. All notices provided for under 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 proposed wind farm site boundary.
9. The Commission varies its rules as follows:
 - A. Minn. R. 7854.0600, subp. 1, is varied to extend the 30-day timeframe for Commission decision on application completeness.
 - B. Minn. R. 7854.0800, subp. 1, is varied to extend the 45-day timeframe for Commission decision on the issuance of a draft site permit.
10. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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