

July 18, 2017

**Via Electronic Filing**

Mr. Daniel Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101-2147

**Re: *In the Matter of the Application of Palmer's Creek Wind Farm LLC for a Large Wind Energy Conversion System Site Permit for the 44.6 MW Palmer's Creek Wind Project in Chippewa County, Minnesota. Docket No. IP-6979/WS-17-265***

Dear Mr. Wolf:

Pursuant to Minn. R. 7829.0410, Palmer's Creek Wind Farm, LLC ("Palmer's Creek") respectfully files the attached Motion requesting that the Minnesota Public Utilities Commission ("Commission") confirm that Palmer's Creek's plan to store wind turbines within the boundaries of the site of its proposed Large Wind Energy Conversion System ("LWECS") prior to receiving a site permit does not run afoul of the prohibition in Minn. Stat. § 216F.04 that no person "may construct an LWECS" without a site permit. Alternatively, Applicant requests the Commission grant any required variance necessary to undertake such storage activities within the proposed Project boundaries. Consistent with Minn. R. 7829.0410, Palmer's Creek notifies interested parties that any opposition to this motion must be filed and served within 14 days of service of this filing.

Palmer's Creek appreciates the Commission's review of its Motion. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

/s/ **Brian Meloy**

Brian Meloy

**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

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<i>In the Matter of the Application of</i>	)	MPUC Docket No. IP-6979/WS-17-265
<i>Palmer’s Creek Wind Farm LLC for a</i>	)	
<i>Large Wind Energy Conversion System</i>	)	<b>MOTION TO CONFIRM ALLOWANCE</b>
<i>Site Permit for the 44.6 MW Palmer’s</i>	)	<b>OF PRE-PERMIT STORAGE</b>
<i>Creek Wind Project in Chippewa</i>	)	<b>ACTIVITIES, OR FOR VARIANCE</b>
<i>County, Minnesota</i>	)	

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Pursuant to Minn. R. 7829.0410, Palmer’s Creek Wind Farm, LLC (“Applicant” or “Palmer’s Creek”) respectfully requests that the Minnesota Public Utilities Commission (“Commission”) confirm that its plan to store wind turbines within the boundaries of the site of its proposed Large Wind Energy Conversion System (“LWECS”) prior to receiving a site permit does not run afoul of the prohibition in Minn. Stat. § 216F.04 that no person “may construct an LWECS” without a site permit.<sup>1</sup> Alternatively, Applicant requests the Commission grant any required variance necessary to undertake such storage activities within the proposed Project boundaries. Due to the scheduled delivery of the turbines to the Project site in September 2017, Applicant respectfully requests that the Commission act on its Motion by August 25, 2017, or determine that no action is necessary to allow Applicant to move forward with its planned storage activities.

**I.  
BACKGROUND**

On April 11, 2017, Palmer’s Creek filed an application for site-permit for a 44.6-megawatt LWECS to be located approximately 1.5 miles north of Granite Falls in Chippewa County (“Project”). The Project will consist of 18 turbines and related facilities located on

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<sup>1</sup> Palmer’s Creek believes that the turbine storage activities contemplated herein do not require Commission approval. Palmer’s Creek nevertheless files this motion in an abundance of caution to ensure that it is meeting its obligations during the ongoing siting process and to be transparent in its plans.

approximately 6,150 acres of privately owned land. Applicant has secured all necessary wind and land rights for the Project through long-term lease agreements from private landowners. Applicant's leasehold interests are sufficient to accommodate the Project, including all activities necessary to develop the Project.

On June 16, 2017, the Commission accepted Palmer's Creek's site permit application as substantially complete and referred the matter to the Office of Administrative Hearings to hold a hearing, solicit additional public comment, and prepare proposed findings of fact, conclusions of law, and recommendations. On June 9, 2017, the Commission issued a notice of public hearing to be held in Granite Falls on June 26, 2017, and established a comment period ending July 6, 2017. No concerns with the Project were raised at the June 26 public hearing, and no written comments from the public were submitted during the comment period.<sup>2</sup> The Project also enjoyed support at a December 2016 public meeting held by the Western Area Power Administration ("WAPA").<sup>3</sup>

Applicant originally anticipated that the in-service date for the Project would be March 2018. To meet this anticipated date, Applicant has purchased the 18 turbines to be used in the Project. These turbines are scheduled for delivery in September 2017, at least two months before a site permit would be issued under the anticipated schedule in this proceeding. Due to its contractual commitments, Palmer's Creek cannot delay the delivery of the turbines. Accordingly, Palmer's Creek must temporarily store the delivered turbines either within the boundaries of the

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<sup>2</sup> The Minnesota Department of Transportation and Minnesota Pollution Control Agency submitted brief comments on the draft Site Permit primarily noting that permits under their respective regulatory purview may be required. The Minnesota Department of Natural Resources ("MDNR") filed more extensive comments on July 6, 2017, regarding the need for additional avian and bat studies and mitigation to reduce potential impacts on bats given the proximity of the Project site to the Minnesota River Valley. Palmer's Creek has been coordinating with MDNR on the issues raised in the comments for several months and several studies are underway to address MDNR's concerns. Palmer's Creek will continue to work with MDNR throughout the siting process.

<sup>3</sup> Because the Project is interconnecting with a WAPA substation, an independent environmental review under the National Environmental Policy Act ("NEPA") is required.

proposed Project site or at an alternative site. If Palmer’s Creek is forced to store the turbines outside the proposed boundaries of the Project, it will incur significant costs that could otherwise be avoided.

In particular, based upon its prior experience with moving turbines twice, Palmer’s Creek anticipates that the cost of storing the Project turbines at an alternative site will be approximately \$3 million, which includes the cost of leasing additional land, conducting limited necessary grading and excavation work to allow for storage, redelivering the turbines to the Project site, and potentially restoring the land to its original condition. Palmer’s Creek can avoid incurring these additional significant expenses if it is allowed to store the equipment within the boundaries of the proposed Project site.

**II.**  
**MOTION TO CONFIRM OR FOR VARIANCE**

**A. Applicant’s Proposed Storage and Related Activity Does Not Constitute “Construction” for Which a Site-Permit is Required.**

Minn. Stat. § 216F.04 provides that no person “may construct an LWECS without a site permit issued by” the Commission.<sup>4</sup> Construction is defined by statute as “any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route *but does not include changes needed for temporary use of sites or routes for nonutility purposes*, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.”<sup>5</sup> Minn. R. 7854.0100, subp. 4 defines construction somewhat differently as “to begin or cause to begin as part of a *continuous program* the replacement, assembly, or

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<sup>4</sup> See also Minn. R. 7854.0300, subp. 1 (“[N]o person may construct an LWECS without a site permit from the commission. No person may commence construction of an LWECS until the commission has issued a site permit for the LWECS.”).

<sup>5</sup> See Minn. Stat. § 216E.01, subd. 3 (emphasis added). Chapter 216F of the Minnesota Statutes, which pertains to LWECS, adopts the definitions set forth in Minn. Stat. § 216E.01. See Minn. Stat. § 216F.01, subd. 1.

*installation* of facilities or equipment or to conduct significant site preparation work for *installation* of facilities or equipment.”<sup>6</sup> Applicant respectfully requests that the Commission confirm that storing the turbines to be used in the Project within the requested boundaries of the Project site before a site permit is issued would not constitute “construction” in violation of Minn. Stat. § 216F.04 or Minn. R. 7854.0100, subp. 4.<sup>7</sup>

Initially, as noted above, under Minn. Stat. § 216F.04, “construction” does not include “changes needed for temporary use of sites or routes for nonutility purposes.” Here, Applicant proposes to use land within the Project site for the storage of turbines, a temporary and nonutility purpose. While certain changes will be made within the Project site boundaries to facilitate such storage (including limited grading and excavation work, the construction of access roads and leveling and compaction of areas where the turbines will be stored)<sup>8</sup> such changes are “needed for temporary use of sites or routes for nonutility purposes.”

Indeed, the activities contemplated would be no different than if the Palmer’s Creek leased property one parcel outside the Project site boundaries to store the turbines – that is – both uses are “temporary” and serve a “nonutility purpose.” Therefore, if Applicant is allowed to store the turbines and equipment within the proposed site, it will avoid the significant expense of grading, excavating, and restoring another location, as well as the significant expense of relocating the turbines and equipment once a site permit is issued. As stated, Palmer’s Creek believes that these additional expenses will total approximately \$3 million.

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<sup>6</sup> Minn. R. 7854.0100, subp. 4, emphasis added.

<sup>7</sup> Applicant proposes to store each turbine at the specific turbine locations set forth in its Application, which would avoid the time and expense of moving the turbines twice.

<sup>8</sup> To the extent required, any delivery and storage of the turbines will be coordinated with the Minnesota Department of Transportation, Chippewa County and any local entities with oversight over use of roads and driveways. Applicant will also obtain any local permits required for the planned storage activities.

Furthermore, if a site permit for the Project is ultimately issued, Applicant (1) commits to restore the land used for storage, but that is not used for the Project, to its original condition; and (2) affirmatively accepts all risk associated with any Commission action denying or conditionally granting a site permit.<sup>9</sup> Thus, any use of the land and any necessary changes will be temporary and for a nonutility purpose and would not constitute “construction” within the meaning of Minn. Stat. § 216F.04.

The Applicant’s proposed storage-related activities also would not meet the definition of “construction” under Minn. R. 7854.0100, subp. 4. In particular, the storage activities would not involve any “continuous program” of “site preparation work for installation of facilities or equipment.” The sole purpose for conducting any work with the Project boundaries before a permit is issued would be to store rather than install the turbines and equipment.

Applicant has already secured all necessary rights from private landowners to engage in any minor excavation and grading work at the proposed Project site. Given the lack of concerns raised by the public to date, Applicant believes the selected site will be determined to be suitable for the proposed Project. Accordingly, by utilizing the proposed LWECS site for storage, Applicant will minimize impacts and costs to the ultimate benefit of the local community and the environment.

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<sup>9</sup> Under the terms of its lease agreements with participating landowners, Palmer’s Creek pays a road fee in return for “a non-exclusive right for vehicular and pedestrian access . . . for purposes related to or associated with the wind energy project . . . which, without limiting the generality of the foregoing, shall entitle Developer to install and use new roads on and across the Property and to use and improve any existing and future roads and access routes . . . .” In addition, if a Site Permit is ultimately not issued or infrastructure placement changes, upon termination of the subject lease(s), Palmer’s Creek is required “to dismantle and remove all equipment, improvements, fixtures and other property owned or installed by Developer or its affiliates on the Property. . . .”

**B. Alternatively, a Variance is Warranted.**

If the Commission nonetheless determines that these storage-related activities constitute construction under its rules,<sup>10</sup> Applicant respectfully requests that the Commission issue a variance from those rules. To be entitled to a variance, Applicant must show that (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.”<sup>11</sup> These criteria are met here.

As explained above, Applicant will incur significant expense if it is required to temporarily store the turbines and associated equipment at a different location, requiring that the turbines be moved twice. This places a significant burden on Applicant. This burden is also excessive in light of the availability of the proposed site for the storage and lack of public opposition to the Project to-date. Allowing on-site storage also would promote rather than adversely affect the public interest, because it will reduce the overall impact of the Project on the environment. Lastly, Applicant is aware of no other standards with which its proposed storage-related activities would conflict. As stated, Applicant commits to restoring all lands to their original condition to the extent they cannot be later utilized during Project construction. If a site permit is not issued or turbine locations change, Applicant will restore all lands used for storage activities to their original condition.

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<sup>10</sup> Applicant understands that the Commission cannot issue a variance from its statutory directives. However, the Commission has already adopted a rule clarifying the definition of “construction” under Minn. Stat. § 216E.01, subd. 3. *See* Minn. R. 7854.0100, subp. 4. Given this clarification, Applicant believes a variance from the statutory definition is not necessary.

<sup>11</sup> Minn. R. 7829.3200, subp. 1.

**III.**  
**CONCLUSION**

For the reasons set forth above, Applicant respectfully requests that the Commission confirm that applicable statutes and rules allow Applicant to engage in the temporary storage and related activities as set forth above before receiving a site permit. Alternatively, Applicant respectfully requests that the Commission issue a variance from its rules to allow Applicant to engage in these activities at the proposed Project site. Due to the scheduled delivery of the turbines to the Project site in September 2017, Applicant respectfully requests that the Commission act on its Motion by August 25, 2017, or determine that no action is necessary to allow Applicant to move forward with its planned storage activities.

Dated: July 18, 2017

Respectfully Submitted,

**STINSON LEONARD STREET LLP**

*/s/ Brian Meloy*

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**STATE OF MINNESOTA  
BEFORE THE  
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*In the Matter of the Application of  
Palmer's Creek Wind Farm LLC for a  
Large Wind Energy Conversion System  
Site Permit for the 44.6 MW Palmer's  
Creek Wind Project in Chippewa  
County, Minnesota*

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MPUC Docket No. IP-6979/WS-17-265

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the **Motion of Palmer's Creek Wind Farm LLC** have been served on this day by e-filing/e-serving to the following:

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Dated this 18<sup>th</sup> day of July, 2017

*/s/ Susan A. Hartinger*

Susan A. Hartinger