

Staff Briefing Papers

Meeting Date December 3, 2020 Agenda Item 1*

Company Buffalo Ridge Wind, LLC

Docket No. **IP-7006/CN-19-309**

In the Matter of the Application of Buffalo Ridge Wind, LLC for a Certificate of Need for the 109 MW Large Wind Energy Conversion System in Lincoln and Pipestone Counties, Minnesota

- Issues
1. Should the Commission accept the environmental report and the record created in this matter as adequately addressing the issues identified in the environmental report scoping decision?
 2. Should the Commission grant a certificate of need for the 109 MW Buffalo Ridge Wind Project proposed in Lincoln and Pipestone Counties?

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 **Relevant Documents**

Date

Application for a Certificate of Need	July 12, 2019
Revised Application for a Certificate of Need	August 9, 2019
LIUNA Petition for Intervention (2 parts)	August 22, 2019
BRW Letter Regarding LIUNA Petition	Sept. 10, 2019
Commission Order Accepting Application as Substantially Complete and Directing Use of Informal Review Process	Nov. 12, 2019

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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.

 **Relevant Documents**

	Date
OAH Scheduling Order	January 8, 2020
EERA Environmental Scoping Decision	January 13, 2020
OAH Amended Scheduling Order	February 11, 2020
BRW Amended Certificate of Need Application	February 21, 2020
DOC DER Comments on the Merits of CN Application	March 2, 2020
EERA Environmental Report	March 5, 2020
BRW Second Certificate of Need Application Amendment	June 5, 2020
OAH Revised Scheduling Order	June 10, 2020
EERA Revised Environmental Report	June 23, 2020
OAH ALJ Report	October 1, 2020
BRW Letter Regarding Exceptions to ALJ's Report	October 19, 2020
DOC EERA Exceptions to ALJ's Report	October 19, 2020

I. Statement of the Issues

1. Should the Commission find that the environmental report and the record created in this matter adequately address the issues identified in the environmental report scoping decision?
2. Should the Commission grant a certificate of need for the 109 MW Buffalo Ridge Wind Project proposed in Lincoln and Pipestone Counties?

II. Background

Buffalo Ridge Wind, LLC (BRW or Applicant) filed a certificate of need (CN) application with the Minnesota Public Utilities Commission (Commission) for a 109 megawatt (MW) Large Wind Energy Conversion System (LWECS) in Lincoln and Pipestone Counties on July 12, 2019. The Buffalo Ridge Wind Farm (Project) is located in Lake Benton, Hope, and Fountain Prairie Townships between the cities of Lake Benton on the west and Tyler on the east. The project is comprised of a total of 45 wind turbine sites (40 proposed wind turbine sites, plus five alternate sites) for a capacity of 108.7 MW. As propose, the project will use 36 GE 2.82 MW wind turbine generators (WTG) and four GE2.52 MW WTGs. Five alternate sites are included to provide flexibility in the event constructability issues are encountered.

Associated facilities include the following: underground collection and feeder lines (approximately 30 miles of 34.5 kV collector lines), temporary access roadways up to 45 feet in width for crane movement and equipment delivery, permanent all-weather gravel access roads 16 feet in width (approximately 20 miles,) one MET tower, temporary staging/laydown construction area (15 acres), turbine construction area for each turbine (approximately five acres), an operation and maintenance (O&M) facility (two acres), and an aircraft detection lighting system.

The estimated size of the Project Area is 17,609 acres (approximately 28 square miles or 73 square kilometers) of mostly agricultural cropland located in Lincoln and Pipestone Counties in southwestern Minnesota, immediately southeast of the City of Lake Benton and southwest of the City of Tyler. The Project is located in a rural, agricultural area. Permanent land disturbance will be approximately 35.9 acres for turbines and associated facilities.

BRW is a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC (NEER). NEER is a national renewable energy company that owns and operates over 23,500 MW of electric generating capacity in 36 states and Canada. NEER has ownership and financial interests in: (1) the formerly operating 26.3 MW Buffalo Ridge Wind Energy Center in Lincoln County, which has been decommissioned; (2) the 98.2 MW Mower County wind facilities in Mower County; and (3) the 100.2 MW Lake Benton II project in Pipestone County which have recently been granted amendments to their site permit amendments to allow for the repowering of the sites. BRW has entered into a power purchase agreement (PPA) with Great River Energy (GRE) to sell the entire output of the project for a 25-year term. In 2019 GRE announced a self-imposed goal of 50 percent of total retail electric sales from eligible

renewable resources by 2030. The Project qualifies as renewable energy and will assist GRE in meeting its 50 percent renewable energy goal.

The Applicant intends to interconnect the project with Northern States Power (NSP) 115 kV Buffalo Ridge Substation via an underground electrical collection line system.

The Project is scheduled to begin construction in mid-2021, with an anticipated in-service and commercial operation by November 2021, pending Commission and other related approvals.

III. Procedural History

On July 12, 2019, BRW filed a CN application for a 109.2 megawatt LWECS to be located in Lincoln County, Minnesota.

On August 9, 2019, BRW filed updates to BRW's CON Application filed on July 12, 2019. The updates included the turbine array refinement to optimize the sound levels of the Project following input from EERA.¹

On August 22, 2019, the Laborers' International Union of America (LIUNA) filed a petition for intervention in this matter.

On September 10, 2019, BRW filed a letter indicating it did not object to LIUNA's request for full party status. BRW also clarified that, although a contractor has not yet been selected for the project, it committed to use reasonable efforts to employ no less than 60% local labor during construction, with local labor defined as residing within Minnesota.

On November 12, 2019, the Commission issued an Order (November 12 Order) accepting the Application as substantially complete, granting LIUNA's request to intervene, requesting the appointment of an Administrative Law Judge, establishing a procedural framework for review of the application, and extending procedural timelines for the Commission's completeness determination and issuance of a draft site permit (DSP) as set forth in rule.

On January 8, 2020, the Administrative Law Judge issued a Scheduling Order (First Scheduling Order) setting forth the procedural schedule for the review of BRW's applications. The First Scheduling Order set March 6, 2020, as the date for the Project's ER to be issued by DOC-EERA, and set March 26, 2020, as the date of the public hearing on the BRW's Site Permit Application.

On January 13, 2020, DOC-EERA filed its Environmental Report (ER) Scoping Decision. The Scoping Decision reviewed the written and oral comments provided with regard to the ER, set forth the matters to be addressed in the ER, and identified alternatives to the Project (that support Minnesota's renewable energy objectives) to be examined in the ER. For alternatives, the ER specifically identified: (1) a generic 109 MW wind generation project sited elsewhere in Minnesota; (2) a 109 MW solar farm; and (3) a "no-build" option, and other possible renewable alternatives.

¹ Revised Application for Certificate of Need (August 9, 2019), eDocket No. [20198-155093-01](#)

On February 11, 2020, the Administrative Law Judge issued an Amended Scheduling Order establishing the dates of March 2, 2020, and March 12, 2020, as the dates for the submission of comments and reply comments, respectively, on the CON Application.

On February 21, 2020, BRW filed its first CON Application Amendment in order to modify the wind turbine technology and layout within the original 17,609-acre Project Area to address FAA, DoD, and USAF concern that the originally proposed wind turbine array may impact a common air route surveillance radar (CARSR).²

On March 2, 2020, DOC-DER filled comments on the merits of the CN Application recommending that the Commission consider the impacts detailed in the ER, and, if the impacts are acceptable, grant the Certificate of Need.³

On March 5, 2020, the ER was filed by DOC-EERA in the CON docket. The ER provided an overview of the Project and its potential environmental impacts as compared to the project alternatives identified in the ER Scoping Decision. The ER found that BRW's proposed project is "feasible and available." In comparing the project to solar power, the report notes that the cost of wind power is more favorable than solar and does not significantly impact crop production as a solar project would.

On June 5, 2020, BRW filed its second CON Application Amendment to further modify the Project's wind turbine technology for four safe harbor turbines and to make revisions to the Project's turbine layout.⁴

On June 10, 2020, the Administrative Law Judge issued a second Revised Scheduling Order (Second Revised Scheduling Order) setting forth a schedule for additional proceedings. The Second Revised Scheduling Order set July 22, 2020, as the date of the public hearing on the BRW's SP Application and indicated that comments would be accepted until August 3, 2020.

On June 23, 2020, DOC-EERA filed a revised ER in the CON docket. The revised ER took into account the changes contained in BRW's Second Application Amendment and reviewed the Project and its potential environmental impacts as compared to the Project alternatives identified in the ER Scoping Decision. Like the initial ER, DOC-EERA found that there was no combination of renewable technologies that is likely to be a feasible and available alternative to the Project.

On October 1, 2020, Administrative Law Judge filed Findings of Fact, Conclusions of Law, and Recommendation (ALJ's Report).

On October 19, 2020, BRW filed a letter regarding exceptions to the ALJ's Report.

² CON Application Amendment (February 21, 2020), eDocket No. [20202-160615-01](#)

³ Comments (March 2, 2020) eDocket No. [20203-160876-01](#)

⁴ Second CON Application Amendment (June 5, 2020), eDocket No. [20206-163771-01](#)

On October 19, 2020, DOC-EERA submitted exceptions to the ALJ's Report.

IV. Statutes and Rules

Certificate of Need. Under Minn. Stat. § 216B.243, subd. 2, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.

Large Energy Facility. The proposed project is defined as a large energy facility under Minn. Stat. § 216B.2421, subd. 2(1), because it is a large electric power generating plant with a capacity of more than 50 megawatts.⁵

Granting a Certificate of Need. In assessing the need for a proposed large energy facility the Commission must consider the factors listed under each of the criteria set forth in Minn. Stat. § 216B.243, subd. 3, and Minn. R. 7849.0120.

Procedural Treatment of Application. The Commission directed use of the informal review process set forth under Minn. R. 7829.1200. The informal review process consists of an initial and reply comment period and a public hearing.⁶

Timing. Under Minn. Stat. § 216B.243, subd. 5, the Commission shall approve or deny a certificate of need for a large energy facility within 12 months of the submission of an application.

Environmental Report. Minn. R. 7849.1000 to 7849.2100, establishes the requirements concerning preparation of an environmental report for a large energy facility requiring a certificate of need. The environmental report is a document that describes the human and environmental impacts of a proposed large energy facility and alternatives to the project and methods to mitigate anticipated adverse impacts. At the time the Commission makes a final decision on the certificate of need application it must determine whether the environmental report and the record in the matter address the issues identified in the environmental report scoping decision.

V. Comments on Merits of the Certificate of Need Application

On December 27, 2019, the Commission issued a Notice of Comment Period on the Merits of the Certificate of Need Application (Notice) which established comment and reply comment deadlines of January 31, 2020 and February 14, 2020, respectively, regarding the merits of the Application. Subsequently, however, the DOC DER requested an extension to obtain additional time to analyze the merits of the Application. The Commission approved the extension and established new comment and reply comment deadlines of March 2, 2020, and March 12, 2020, respectively.

⁵ See also Minn. R. 7849.0010, subp. 13.

⁶ See also Minn. R. 7829.2500, subp.9.

Subsequently, a notice of comment period on BRW's certificate of need application was issued by the Commission on June 19, 2020, as part of the notice for the joint public hearing requesting comments on the project by August 3, 2020. Comments were filed by (1) DOC-EERA; (2) MnDNR; (3) The Nature Conservancy (TNC); (4) The International Union of Operating Engineers, Local 49 (Local 49); (5) LIUNA; (6) Roger Johnson; (7) Tara Kroger; and (8) Justin Erdman.

A. Department of Commerce DER Comments and Analysis

On March 2, 2020, DOC DER filled comments on the merits of the CN Application in response to the Commission December 27, 2019 notice finding that:

- The Department did not have any contested issues of fact with respect to the representations made in the Application;
- Concluded that the Commission should grant a certificate of need (CN) for the project assuming that, after consideration of the Environmental Report, the Commission determines that the proposed facility "will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health";
- The Department noted that the costs associated with the proposed Project include approximately \$170 million in capital costs related to the construction of the proposed Project, \$140,000 of operational and maintenance (O&M) costs in the proposed Project's first year of operation, and \$3.3 million in O&M costs in total for the remaining 24 years;
- Concluded that the benefits of the proposed Project are numerous, as explained in greater detail in the comments, and the proposed Project is expected to benefit GRE's members and the state of Minnesota; and

Overall, the Department recommended that the Commission determine that BRW has 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;
- a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record; and
- 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 states and federal agencies and local governments.

B. LIUNA Comments

LIUNA submitted an Economic Analysis Fact Sheet into the record concluding that the Buffalo Ridge Wind Farm will contribute tens of millions of dollars in economic activity to southwestern

Minnesota at a time when workers throughout the state desperately need new economic opportunities, especially during these difficult times when the coronavirus pandemic has pushed Minnesota into a deep economic crisis, where the statewide unemployment rate jumped from 2.9% in March 2020 to a high of 9.9% in May 2020. LIUNA commented that new investments in clean energy projects like the Buffalo Ridge Wind Farm will create good family-supporting jobs for Minnesota workers and help create a pathway out of the recession. The project will create hundreds of family-supporting construction jobs, generate \$18 million in landowner payments and an additional \$15 million in county tax revenue. The project will have a particularly positive socioeconomic impact because the developer, NextEra, has indicated a commitment to work with labor unions to recruit a skilled local workforce. As LIUNA has documented in detail in past dockets, use of a majority-local workforce to build a wind farm can deliver significant socioeconomic benefits for host communities.

C. The Nature Conservancy Comments

The Nature Conservancy in Minnesota, North Dakota, and South Dakota filled initial comments on July 30, 2020 expressing concerns about the impacts from the proposed Project on the native prairie and prairie obligate species in Lincoln and Pipestone Counties and recommended re-locating all of the turbines from the western area of the footprint (towers 15, 22-25, 27, 28, 33, and 37) to other areas of the project to avoid impacts to the native prairie and wildlife.

Following consultation with the Project proposer, Buffalo Ridge Wind, on August 18, 2020 the Nature Conservancy filled another letter withdrawing their previous request for the PUC to delay the certificate of need and the site permit for this project, indicating that while some of their concerns still stand, they do not intend to pursue further action on this project through the PUC process. Instead, The Nature Conservancy indicated their commitment to working collaboratively with the Project proposer, focusing on compatibility of their mutual operations, especially regarding management of prescribed fire on their lands, essential to maintaining native prairie.

D. Public Comments

Numerous public comments both verbal, during the public meeting and the public hearing, and written were received from citizens living in the area, including local elected officials. People living away from the project but having an interest in the area also commented. The majority of the comments received were in support of the project. Members of the public supporting the project spoke about the benefits for the county and townships in terms of property taxes, jobs and economic benefits, and lease payments to the participating landowners for hosting wind turbines and access roads. There were also comments from local unions talking about their support for the project and how important it is to use local labor.

There was a single opposing written comment received from Justin Erdman, a non-participating resident in the project area who, although noted that wind turbines are a valuable resource to generate electricity, questioned the benefits that go outside of the region instead of the community where they are erected. Mr. Erdman also noted that he did not see the Project as having a financial benefit to the local community, and that the only benefactors are large

landowners. Mr. Erdman also noted the noise and shadow flicker that can emanate from the wind turbines. He indicated that any landowner experiencing noise or shadow flicker from the Project turbines should be compensated. Finally, Mr. Erdman noted that the Project and related construction could create hazardous road conditions.

On August 25, 2020, Mr. Erdman submitted additional comments objecting to siting proposed turbines 19 and 20 around his residence. Mr. Erdman stated that the updated shadow flicker map depicts his residence receiving between 100-150 hours of shadow flicker (following the revised Project layout from BRW's June 5, 2020 Second CON Application Amendment) compared to 30 hours of shadow flicker from the original map. He also indicated his residence is expected to receive over 50 decibels of noise pollution from wind turbines 19 and 20. Mr. Erdman has also complained about having been left to pay over \$2,300 in legal fees associated with negotiating an agreement with NextEra, which in the end stopped communicating with his lawyer after a proposed turbine north of his residence was dropped from the project layout.

VI. Administrative Law Judge Report

As per the November 12, 2019 Order, the Commission authorized the certificate of need application to be reviewed using the informal review process. The Commission also requested that an Administrative Law Judge (ALJ) preside over the public hearing and submit a report summarizing the public comments received at hearing and within the public comment period. Of note, in the Site permit docket on this project (19-394) the Commission asked that the ALJ submit a report with findings of fact, conclusions and a recommendation. The ALJ report summarized the public comments received during the joint public hearing and in the public comment period.⁷

VII. Staff Analysis

Based on information in Buffalo Ridge Wind's certificate of need application, the analysis provided in the environmental report, recommendations from the DOC-DER, the ALJ Report, and other evidence in the record; staff provides the following discussion and recommendations.

A. Environmental Report

Staff has reviewed the Environmental Report (ER) and believes the DOC-EERA conducted an appropriate environmental analysis of the project for purposes of the certificate of need, and the ER satisfies the requirements in Minn. R. 7849.1200. The ER did not identify any unique or significant environmental impacts from the construction and operation of the project that could not be properly mitigated. The report also discussed potential impacts of the proposed project, a similar sized LWECS facility in another location, a 109 MW solar farm alternative, and the no-build alternative.

The ER provided an overview of the Project and its potential environmental impacts as compared to the project alternatives identified in the ER Scoping Decision. The ER found that

⁷ The ALJ's October 1, 2020 Findings of Fact, Conclusions of Law, and Recommendation is discussed in more detail in staff's Site Permit Briefing Paper.

BRW's project is "feasible and available." In comparing the project to solar power, the report notes that the cost of wind power is more favorable than solar and does not significantly impact crop production as a solar plant would.

On June 23, 2020, DOC-EERA filed a revised ER in the CON docket. The revised ER took into account the changes contained in BRW's Second Application Amendment and reviewed the Project and its potential environmental impacts as compared to the Project alternatives identified in the ER Scoping Decision. Like the initial ER, DOC-EERA found that there was no other combination of renewable technologies that is likely to be a feasible and available alternative to the Project.

B. DOC-DER

Staff agrees with the recommendation of the DOC-DER that Buffalo Ridge has demonstrated that the project meets the criteria set forth under Minn. Stat. §216B.243 and Minn. R. 7849.0120 (A, B, and D). Staff further believes that based on a consideration of the factors set forth in Minn. R. 7849.0120(C), the ER and evidence in the record demonstrates that the project will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health. Therefore, staff agrees with the Department that the Commission should issue a certificate of need to Buffalo Ridge Wind, LLC, for the 109 MW Buffalo Ridge Wind Farm to be located in Lincoln and Pipestone Counties, Minnesota.

VIII. Decision Options

A. Environmental Report

1. Determine that the Environmental Report and the record created in this matter address the issues identified in the Scoping Decision.
2. Determine that the Environmental Report and the record created in this matter do not address the issues identified in the Scoping Decision and direct the DOC-EERA to prepare a supplement to the report that addresses the identified deficiencies.
3. Take some other action deemed more appropriate.

B. Certificate of Need

1. Grant a certificate of need for the 109 megawatt Buffalo Ridge Wind Farm.
2. Deny a certificate of need for the 109 megawatt Buffalo Ridge Wind Farm proposed in Lincoln and Pipestone Counties, Minnesota.
3. Take some other action deemed more appropriate.

Staff Recommendation: A1 and B1