

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

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

ISSUE DATE: November 12, 2019

DOCKET NO. IP-7006/CN-19-309

ORDER ACCEPTING APPLICATION,  
DIRECTING USE OF INFORMAL  
REVIEW PROCESS AND OTHER  
ACTION

**PROCEDURAL HISTORY**

On July 3, 2019, the Commission issued an Order that granted exemptions from certain certificate-of-need application content requirements as requested by Buffalo Ridge Wind Energy, LLC (Buffalo Ridge or Applicant) in its petition.

On July 12, 2019, Buffalo Ridge filed a certificate-of-need application for a 109.2 megawatt (MW) Large Wind Energy Conversion System (LWECS) to be located in Lincoln County, Minnesota.

On July 24, 2019, the Commission issued a notice that requested comments on: 1) whether Buffalo Ridge's certificate-of-need application contained the information required under Minn. R. 7849; 2) whether the Commission should find the application complete; 3) whether the application should be evaluated using the Commission's informal process or referred to the Office of Administrative Hearings (OAH) for contested case proceedings; and 4) whether there are any other issues or concerns related to this matter. Initial comments were accepted until August 13, 2019, and reply comments until August 20, 2019.

On August 9, 2019, the Applicant submitted updates to its certificate-of-need application reflecting Applicant's refinement of its turbine array to optimize the sound levels of the Project following input from the Minnesota Department of Commerce (Department).<sup>1</sup>

On August 12, 2019, Applicant filed an errata to the Revised Application to provide a corrected version of the signature page.

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<sup>1</sup> The revisions include: 1) changing turbine technology at certain locations; 2) eliminating two turbines (16 and 20) as filed in the initial Application; 3) revising alternate turbines; and 4) running certain turbines with noise reduction capability.

Also on August 12, 2019, the Department filed comments and recommendations concerning Applicant's certificate-of-need application.

On August 20, 2019, Applicant filed reply comments both in public and trade secret versions, addressing the following sections of the Minnesota Rules: 7849.0250(C)(5)-(6); 7849.0270(1)-(6) and 7849.0280.

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

On August 23, 2019, the Department provided a response to Applicant's reply comments indicating it now believed the certificate-of-need application was complete.

On September 10, 2019, Applicant filed a letter indicating it did not object to LIUNA's request for full party status. Applicant 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 October 24, 2019, the Commission met to consider the matter.

## **FINDINGS AND CONCLUSIONS**

### **I. The Project**

The Buffalo Ridge Wind Project (the Project) is requesting a certificate of need for a 109.2 megawatt (MW) LWECs. The Project's footprint covers approximately 16,893 acres primarily in Lincoln County. Buffalo Ridge has also filed a site permit application for the Project.<sup>2</sup>

Buffalo Ridge is a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC (NEER), a national renewable energy company. Buffalo Ridge has entered into a power purchase agreement (PPA) with Great River Energy to sell the entire output of the Project for a 25-year term. The Project will assist Great River Energy to meet its self-imposed goal of 50 percent of total retail electric sales from eligible renewable resources by 2030.

### **II. Summary**

In this order, the Commission will accept Buffalo Ridge's application for a certificate of need as complete and will elect to review the application using its informal review process. The Commission will also delegate scheduling authority to the Executive Secretary and adopt certain other additional actions as set forth herein.

### **III. Jurisdiction**

Before constructing a large electric generating facility, one must obtain a certificate of need from the Commission. A large electric generating facility includes an electric power generating plant

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<sup>2</sup> The Site Permit Application was filed on July 17, 2019. Docket No. WS-19-394.

or combination of plants with a combined capacity of 50 MW or more.<sup>3</sup> Because the Project is more than 50 MW, Buffalo Ridge must obtain a certificate of need. Minn. R. Ch. 7849 contains the application requirements and ultimate criteria for demonstrating need.

#### **IV. LIUNA Intervention Request**

The Commission has considered LIUNA's request to intervene as a full party in this matter. LIUNA asserted that no other party can adequately represent the interests of their union and their members. LIUNA has experience as a party in similar wind permitting cases, and is prepared to meet their obligations as a party. The Applicant raised no objections to LIUNA's request, and the Commission will grant LIUNA's petition to intervene.

#### **V. Application Completeness**

The Department asked Applicant to provide certain additional information in reply comments. Buffalo Ridge provided the information sought. After further review, the Department recommended that the Commission find the Application to be substantially complete.

The Commission has reviewed the Application and the parties' comments and agrees with the Department. The Commission will accept the Application as complete.

#### **VI. Review Process**

The Commission has the discretion to evaluate certificate-of-need applications using either contested-case proceedings or an informal comment and reply process under Minn. R. 7829.1200.

No person has identified any contested issue of material fact or recommended that the case be referred to the Office of Administrative Hearings for contested-case proceedings at this time. The Commission will therefore direct that the informal comment and reply process be used for developing the record. If material contested facts are identified and any party requests a contested case proceeding by the date reply comments are due, the matter will be brought back to the Commission for expeditious referral to the OAH for a contested case proceeding.

#### **VII. Administrative Responsibilities**

To ensure proper development of the record, the Commission will delegate administrative authority to the Executive Secretary. Charlie Bruce is the Commission's Public Adviser to facilitate citizen participation in the review process. His phone number is 651.201.2251 and his email is [publicadvisor.puc@state.mn.us](mailto:publicadvisor.puc@state.mn.us).

The Commission will also adopt the additional requirements described below:

- Request that the Department continue to study issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to Buffalo Ridge for the Project;

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<sup>3</sup> Minn. Stat. § 216B.2421, subd. 2(1).

- Require Buffalo Ridge to facilitate in every reasonable way the continued examination of the issues by the Department and Commission staff;
- Request that Buffalo Ridge place an electronic or print copy of the application for review in a Government Center and/or Public Library in the vicinity of the project;
- Direct that Commission staff work with the Administrative Law Judge (ALJ)<sup>4</sup> and the staff of the Department in selecting suitable time(s) and location(s) for a public hearing on the application; and
- Direct that Buffalo Ridge work with Commission staff to arrange for publication of the notice of the hearings in newspapers of general circulation at least ten (10) days prior to the hearings, that such notice be in the form of visible display ads, and proofs of publications of such ads be e-filed with the Commission.

## **VIII. Rule Variances**

### **A. Legal Standard for Varying Rules**

The actions taken today require variances to Commission rules. Under Minn. Rules, part 7829.3200, the Commission is authorized to vary any of its rules upon making the following findings:

- enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- granting the variance would not adversely affect the public interest; and
- granting the variance would not conflict with standards imposed by law.

### **B. Timeline for Acting on Completeness**

Minn. R. 7849.0200, subp. 5 requires the Commission to act within 30 days of filing if it determines that a certificate-of-need application is not substantially complete. The Commission has reviewed the application and finds that careful consideration of its completeness requires more than 30 days.

To avoid delay and inefficiency as the case progresses, it is critical to begin with a substantially complete filing. The Commission has therefore solicited comments on completeness from interested persons. Receiving, analyzing, and acting on those comments requires more than thirty days from the date the application was filed.

The Commission will therefore vary the 30-day time line of Minn. Rules, part 7849.0200, subp. 5, making the findings set out below.

### **C. Timeline for Holding a Public Meeting Extended**

Minn. R. 7849.1400, subp. 3 requires the Department to hold a public meeting within 40 days of a certificate-of-need filing. In similar dockets requiring a certificate of need, the Department and Commission staff typically hold a joint public information/environmental review scoping meeting for which the 40-day timeline is simply too short because of the time required to solicit comments

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<sup>4</sup> The ALJ will be appointed in the accompanying site permit docket, Docket No. IP-7006/WS-19-394.

and get a decision on application completeness. Enforcing the time line would likely require the meeting to be held before the Commission's determination on the filing's completeness. Such an outcome contravenes the public interest and jeopardizes a careful and thorough development of the case. The Commission will therefore extend the time line for holding the meeting making the following findings:

- Enforcing the 30-day and 40-day time frames would impose an excessive burden upon the public, upon parties to the proceeding, and upon the Commission and the Department because it would not allow adequate time to review the application, schedule a Commission meeting, and prepare a written order;
- Varying the 30-day and 40-day time frames would not adversely affect the public interest. Varying the 30-day and 40-day time frames would instead serve the public interest by allowing more time for public comment on, and Commission consideration of, the application; and
- Varying the 30-day and 40-day time frames would not conflict with any standards imposed by law.

The public meeting will be promptly scheduled after a determination on the completeness of the filing is made.

### **ORDER**

1. The Commission accepts the certificate of need application as substantially complete as of Buffalo Ridge's reply comments - August 20, 2019.
2. The Commission directs that the certificate of need application be reviewed using the informal review process.
3. The Commission delegates administrative authority, including timing issues, to the Executive Secretary.
4. The Commission requests that the Department continue to study the issues and indicate during the hearing process through testimony or comment its position on the reasonableness of granting a certificate of need.
5. The Commission will require the Applicant to facilitate in every reasonable way the continued examination of related issues by Department and Commission staff.
6. The Commission will require the Applicant to place a print or electronic copy of the application in the government center or public library located closest to the proposed project site.
7. Applicant shall work with Commission staff to arrange for publication of the notice of hearings in newspapers of general circulation at least ten days prior to the hearings. Such

notice shall be in the form of visible display ads, and that proof of publication shall be obtained from the newspapers selected.

8. The Commission will vary Minn. R. 7849.0200, subp. 5, and extend the 30-day time frame for Commission decision on application completeness.
9. The Commission will vary Minn. R. 7849.1400, subp. 3, and extend the 40-day time frame for the Commission staff and the Department of Commerce to hold a public information/environmental review scoping meeting.
10. LIUNA's petition to intervene as a party in this docket is granted.
11. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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