

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: October 31, 2013. Agenda Item # *4

Company: **Odell Wind Farm, LLC**

Docket No. **IP6914/WS-13-843**

In the Matter of the Site Permit Application for a 200 MW Large Wind Energy Conversion System for the Odell Wind Farm in Cottonwood, Jackson, Martin and Watonwan Counties

Issue(s): Should the Commission find the Application complete? Should the Commission provide additional procedural guidance? Should the Commission vary Minnesota Rule 7854.0800 to allow additional time for a preliminary determination as to whether a Draft Site Permit should be issued? Should the Commission appoint a public advisor?

Staff: Michael Kaluzniak651-201-2257

Relevant Documents

Application (9 Parts) September 26, 2013
Department of Commerce EERA CommentsOctober 11, 2013
Applicant Reply CommentsOctober 18, 2011

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 otherwise noted.

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I. Statement of the Issues

Should the Commission find the Application complete?

Should the Commission provide additional procedural guidance?

Should the Commission vary Minnesota Rule 7854.0800 to allow additional time for a preliminary determination as to whether a Draft Site Permit should be issued?

Should the Commission appoint a public advisor?

II. Background

On September 26, 2013, Odell Wind Farm, LLC (applicant) filed an application with the Commission for a site permit for a 200 MW Large Wind Energy Conversion System for the Odell Wind Farm in Cottonwood, Jackson, Martin and Watonwan Counties.

On October 11, 2013, the Department of Commerce Energy Environmental Review and Analysis Staff (EERA) filed comments on the completeness of the application.

Reply Comments from the applicant were received on October 18, 2013.

III. Laws and Rules

Certificate of Need

The project described in the application is classified as a large energy facility as defined in Minnesota Statutes Section 216B.2421, subd. 2(1). The Applicant stated that, in July 2013, they executed a power purchase agreement with Northern States Power (Xcel Energy) for the full output of the facility as a resource designated to be used to meet Xcel's requirements of the Renewable Energy Standard under Minnesota Statutes Section 216B.1691. Such projects are not required to obtain a certificate of need under Minnesota Statutes Section 216B.243, subd. 9.¹

Site Permit

The proposed wind project is considered a large wind energy conversion facility (LWECS) pursuant to Minn. Stat. Section 216F and subject to the Minn. Rules found in Chapter 7854. Therefore a site permit is required to be obtained from the Commission prior to construction. Site permit applications for a LWECS are required to meet the substantive criteria established in Minnesota Statutes Section 216E.03, subd. 7. Minnesota Statutes Section 216F.03 requires that LWECS siting be made in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

¹ At its October 17, 2013 Agenda Meeting, the Commission considered whether the Odell wind project is exempt from the certificate of need requirements, refer to PUC Dockets E002/M-13-716 and E002/M-13-603.

The Site Permit application content requirements are found in Minnesota Rule 7854.0500. Pursuant to Rule, the Commission could accept, conditionally accept, or reject the application. Should the Commission elect to conditionally accept or reject the application, it must advise the applicant of the deficiencies in the application and identify the manner in which the deficiencies could be addressed. The Commission is also asked to provide guidance for the application process and address additional procedural matters such as rule variances.

Minnesota Rule, part 7854.0700 requires the Commission to designate a staff person to act as the public advisor on the Project upon acceptance of the Site Permit Application.

Minnesota Rule 7854.0800 provides that the Commission shall make a preliminary determination on whether a permit may be issued or should be denied within 45 days after acceptance of the application. If the preliminary determination is to issue a Draft Site 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. Issuance of a Draft Site Permit provides no authorization to construct an LWECS and does not restrict the Commission in any way from changing the terms and conditions of the permit at final issuance, if issued.

Minnesota Rules, part 7829.3200 enables the Commission to grant a variance to its rules when it determines the following three conditions are met:

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

IV. Party Positions

Odell Wind Farm, LLC Site Permit Application

Odell Wind Farm, LLC is a wholly-owned subsidiary of Geronimo Wind Energy, LLC d/b/a Geronimo Energy, LLC (Geronimo). On September 26, 2013, the applicant filed an Application for an LWECS site permit to build the Odell Wind Farm (Project) in Lakeside and Mountain Lake townships in Cottonwood County, in Christinia and Kimball townships in Jackson County, in Cedar Township in Martin County, and in Odin Township in Watonwan County. A Project Location Map taken from the Application is enclosed as Appendix A.

The proposed project boundary consists of approximately 35,492 acres, of which approximately 20,780 acres are currently leased for the project. The project, if approved, would include a wind turbine layout comprised of up to 133 turbines and associated facilities including gravel access roads, an electrical collection system, temporary and permanent meteorological towers, a substation facility, a temporary batch plant and staging/laydown construction area, and possibly an O&M building. Three separate turbine types are under consideration for the project.

The applicant seeks to commence construction of the project in the second quarter 2014. The applicant has also proposed to construct an approximately 9.5-mile, 115 kilovolt (kV) transmission line from the Odell Wind Farm substation in Cottonwood County to the planned 115 kV/345 kilovolt interconnection substation in Martin County. On July 8, 2013, the applicant filed a notification of a pending route permit application for a high voltage transmission line (“HVTL”) for the 115 kV transmission line and associated facilities necessary to interconnect the project.² The applicant stated that the application is formatted in a manner consistent with the guidance materials supplied by the Department of Commerce.³

Department of Commerce, Energy Environmental Review and Analysis – Initial Comments

Department of Commerce Energy Environmental Review and Analysis (EERA) staff filed its comments and recommendations on October 11, 2013. EERA reviewed the application for completeness considering the rule requirements and EERA’s application guidance document.

EERA indicated that the application included the contents anticipated by rule; however, EERA noted two items that need to be addressed. EERA noted that, in response to State Historical Preservation Office recommended surveys, the applicant has not indicated who would conduct the surveys and when the surveys would be conducted.

Secondly, EERA noted that the Applicant has also developed the site characteristics (Tier 2) and has partially conducted surveys (Tier 3) in cooperation with the Minnesota Department of Natural Resources (DNR) and the United States Fish and Wildlife Service (USFWS); and included the Wildlife Assessment and Field Studies Report in the Application appendices. EERA indicated that while some Tier 3 pre-construction surveys, bat acoustic survey and raptor survey, are currently being completed; final reports with survey results and findings are not anticipated until late-2013. In Section 8.19 Wildlife, sub-section 8.19.3 Mitigative Measures, the Application stated that the pre-construction surveys would be conducted to better understand potential project risks to avian and bat species. The Applicant also stated that site layout design will be considered as a measure to minimize risks to avian and bats species.

EERA concluded that the Application provided complete information sufficient to begin the Site Permit review process as required by Minnesota Rule 7854.0500. EERA staff is requesting that the Commission direct the Applicant to honor requests for additional information as necessary to facilitate the review process and development of a Draft Site Permit.

EERA recommends the Commission accept the Application as complete with the understanding that the permitting process will not progress to a preliminary determination on a Draft Site Permit pursuant to Minnesota Rule 7854.0800 until the pre-construction acoustic bat and raptor surveys have been completed, survey data has been analyzed, and final Tier 3

² See *Notification of Pending Route Permit Application Under Alternative Permitting Process for the Proposed 115 kV Odell Wind Farm Transmission Line and Associated Facilities in Cottonwood, Jackson, and Martin Counties, Minnesota*, Commission Docket No. IP6914/TL-13-591, July 8, 2013.

³ Minnesota Department of Commerce, *Energy Facility Permitting Application Guidance for Site Permitting of Large Wind Energy Conversion Systems in Minnesota*, August 2010.

study reports have been submitted. It should be noted that the study reports must be submitted to EERA, DNR, and USFWS for review no later than December 31, 2013, in order to achieve the permit schedule milestones contemplated by EERA and PUC staff.

EERA staff requested a rule variance to vary the procedural requirements of Minnesota Rule 7854.0800, which requires a preliminary determination on whether to issue a Site Permit within 45 days of application acceptance. EERA stated that additional time is appropriate to accommodate an EERA public informational meeting, and to allow interested persons time to comment on the application and issues to be considered in development of a Draft Site Permit for the Project. EERA staff believes that the conditions for a variance are met in this case, and over the past several years the Commission has found this variance is appropriate, beneficial, and in compliance with the three-factors contained in Minnesota Rules, part 7829.3200.

Regarding the Department of Commerce's process recommendations, EERA staff requested that the Commission delay the decision on whether to refer the project to the Office of Administrative Hearings (OAH) for summary proceedings until the Draft Site Permit has been developed. Doing so would provide insight into the potential Project impacts, and clarity as to the appropriate site permit conditions to be included. Depending on the outcome of that process, the Commission could then determine whether additional input can be addressed by requesting that an ALJ preside over the public hearing and provide a summary of comments received or whether the level of issues or controversy indicate that referral to the OAH is warranted.

Finally, the EERA included a project timeline with anticipated milestones developed in conjunction with Commission staff as indicated below:

Estimated Timeframe	Process Step
9/26/2013	Application Submitted
November 2013	Commission Action on Acceptance
November 2013	EERA Issues Notice of Comment Period on Issues for Draft Permit
December 2013	EERA Information Meeting
December 2013	EERA Comment Period Closes on Issues for Draft Permit
January 2014	EERA files technical analysis of Application and Project, Files Draft Site Permit Language*
February 2014	Commission Decision on Draft Site Permit Issuance
February 2014	Commission Issues Public Hearing Notice
February 2014	Public Hearing (replaces public meeting)
March 2014	Public Hearing Comment Period Closes; Applicant files proposed FOF**

March 2014	Reply Comment Period Close: EERA files Post Hearing Technical Analysis, Applicant files response to hearing comments**
April 2014	ALJ Report w/ recommendations**
April 2014	Exceptions**
May 2014	Commission Decision on Issuance***

* EERA's ability to complete this step is dependent upon Geronimo's timely submittal of its final Tier 3 results, consultation with EERA, DNR and USFWS, and development of proposed revisions to the ABPP and project to reflect those results and consultations.

**Specifics of these steps are dependent on Commission decision regarding whether or not the matter is referred to the OAH

***Applicant would like to begin construction in April/May 2014

Reply Comments

The applicant filed reply comments on October 18, 2013 to address the application content issues identified by EERA.

Odell agreed to have a trained cultural resource professional complete a cultural and archaeological resources study, prior to construction, over areas to be disturbed by the Project. The applicant noted that it is standard practice in Minnesota for owners and developers of wind energy projects to conduct cultural and archaeological studies after or near the time a site permit has been issued by the Commission and prior to construction when the project's disturbance areas have been accurately delineated. Such a timeline will provide ample time for the surveys and implementation of necessary mitigation strategies, if any, as outlined in Odell's site permit application.

The applicant noted that it has voluntarily agreed to conduct Tier 3 wildlife studies in order to provide additional information for turbine siting and mitigation purposes. Odell concluded in its Tier 1 and Tier 2 analyses that the project is unlikely to have significant adverse impacts to wildlife. Moreover, the DNR indicated that the Odell project was likely to have low impacts to wildlife, provided certain precautions were taken. According to the USFWS's Land-Based Wind Energy Guidelines, a developer may obtain necessary site permits and design and construct the project if the Tier 2 results indicate a low probability of significant adverse impacts to wildlife. Moreover, according to the MN DNR's Draft Avian and Bat Survey Protocols for Large Wind Energy Conversion Systems in Minnesota, post-construction fatality monitoring is voluntary at low-risk sites. Odell's ABPP and site permit application reflect the determination that the project is likely to be a low risk to wildlife.

Consistent with its coordination efforts, Odell is committed to providing the final results of its 2013 Tier 3 studies to EERA Staff, DNR, and USFWS upon completion of final reports summarizing those studies. As indicated in Odell's site permit application, data collection for its Tier 3 studies will not be completed until November 15, 2013. Odell will analyze the data and provide final reports to EERA Staff, MN DNR and USFWS by December 31, 2013 for

additional consultations with those agencies. Odell will continue to update its project layout and ABPP as needed after analyzing the Tier 3 results and considering EERA Staff, MN DNR and USFWS comments on the Tier 3 results.

V. Staff Comments and Recommendations

Application Acceptance

Staff has reviewed the site permit application relative to the content requirements established in Statute and Rule. Staff also has reviewed the EERA comments and recommendations. Staff agrees with the EERA's comments and recommendation that the application be considered complete as of the submittal of the additional information requested by the Department on October 18, 2013 with the understanding that the permitting process will not progress to a Preliminary Determination on a Draft Site Permit step pursuant to Minnesota Rule 7854.0800 until the pre-construction acoustic bat and raptor surveys have been completed, survey data has been analyzed, and final Tier 3 study reports have been submitted.

Procedural Guidance

Project Schedule

Commission staff have reviewed the schedule identified above and determined that some changes along with providing additional granularity would help to minimize the time for completion of the review process without sacrificing opportunities for public participation and development of a robust docket record. Based on these discussions, staff has slightly modified the tentative schedule as follows:

Estimated Timeframe	Process
September 26, 2013	Application Submitted
October 31, 2013	Commission Action on Acceptance and Process
November 16, 2013	<ul style="list-style-type: none"> - PUC issues Order Accepting Application - PUC files Site Permit Template - PUC issues Notice of Comment Period on Issues for Draft Permit¹
December 15, 2013	EERA Information Meeting (optional)
December 31, 2013	<ul style="list-style-type: none"> - Comment Period Closes on Issues for Draft Permit - Applicant provides final reports (e.g. ABPP, Tier 3 studies) to EERA Staff, MN DNR and USFWS for additional consultations²

January 15, 2014	- EERA files technical analysis of Application and Project, Files Draft Site Permit language* - Reply Comments on Draft Site Permit Issues
January 30, 2014	Commission Decision on Issuance of Draft Site Permit
February 7, 2014	- Commission issues Order on Draft Permit Issuance - Commission issues Public Hearing Notice
February 17, 2014	Notice of Draft Site Permit Notice published in EQB Monitor
February 20, 2014	Public Hearing
March 10, 2014	- Public Record Closes; - Applicant files proposed Findings of Fact - EERA files Post-Hearing Technical Analysis - Applicant files response to hearing comments*
April 10, 2014	ALJ Report w/ recommendations
April 24, 2014	Exceptions to ALJ Report Due
May 15, 2014	Commission decision on Site Permit issuance
May 22, 2014	Commission Order issued
Ongoing	Permit Compliance

- 1) PUC staff to consult with EERA on a joint notice should EERA undertake a public information meeting.
- 2) EERA staff has indicated to the applicant that timely completion of this milestone is crucial to maintain this schedule.

It should be emphasized that this schedule represents a present-day “best case” scenario. This schedule may be affected by several critical milestones including the applicant’s ability to provide information and studies, scheduling considerations of the Office of Administrative Hearings and the relative complexity of the issues within the route permit.

Referral of the Matter to the Office of Administrative Hearings

Staff recommends that the Commission refer the docket to the OAH for a “summary proceeding” and request that the Administrative Law Judge (ALJ) provide a summary of comments, proposed findings of fact, a recommendation to the Commission and a proposed Site Permit conditions. If the Commission elects to refer this matter to the OAH for this docket, staff suggests that the issue to be addressed is whether the proposed project meets the selection criteria established in Minn. Stat. 216F, and Minn. Rules Chapter 7854.

Further, if the matter is referred, staff recommends that the Commission request the ALJ to adapt the existing procedural framework set forth in Minn. Rule 7854 to include the following features, which will facilitate comprehensive factual development and informed decision-making:

- The ALJ assigned to this matter emphasizes the statutory time frame for the Commission to make final decisions on applications and the ALJ strongly encourage the Applicant and others to adhere to a schedule that conforms to the statutory timeframe.
- Directs Commission staff to formally contact relevant state agencies, and request their participation in the development of the record and public hearings.
- Throughout the course of the proceedings, the Commission encourages the Administrative Law Judge to ask parties, participants, and the public to address whether the proposed project meets the selection criteria established in Minn. Stat. § 216F and Minn. Rules Chapter 7854.
- The initial technical analysis is issued before the public hearing to allow for any necessary modifications under project timelines.
- The Commission requests the Administrative Law Judge to prepare a report setting forth findings, conclusions, and recommendations on proposed permit conditions and the merits of the project, applying the criteria set forth in statute and rule.

Site Permit Template

Staff will distribute a site permit template to provide the public and other government agencies with a basis upon which site specific permit language will be drafted. Template language is intended to be a nonbinding starting point for discussion and the template language will be written so as to be easily modified during the proceeding.

Project Notice Distribution

Staff notes that the applicant is required to provide notice of application acceptance to a newspaper in general circulation in each county, county board, city council and township board within the project counties, and to each landowner within the site. Staff recommends that the Commission direct the applicant to consult with PUC and EERA staff regarding the content and distribution on the notice.

Variance Request

EERA has requested a variance from Minnesota Rule 7854.0800 which 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.

Staff believes the requirements for varying the 45-day time limit of Minnesota Rule 7853.0240, are met as follows:

- Enforcing the 45-day limit would impose an excessive burden on the public, upon parties to the proceeding, and upon the Commission by jeopardizing the thoroughness of the Commission's decision-making process and a thorough development of the case.
- Varying the 45-day limit would not adversely affect the public interest and would in fact serve the public interest by helping to ensuring the application is substantially complete and any supplemental information is provided as soon as possible in the proceeding.
- Varying the 45-day limit would not conflict with any other standards imposed by law, as the timing requirement is only required by rule and not by statute.

Staff recommends that the Commission vary Minn. Rules, part 7854.0800 to allow additional time for the Commission to make a preliminary determination whether a permit may be issued or denied.

Appointment of a Public Advisor

In order to facilitate the review process, staff recommends that the Commission delegate administrative authority to the Executive Secretary to designate a Commission employee to facilitate citizen participation in the process.

VI. Decision Alternatives

A. Rule Variance

1. Vary Minnesota Rule 7854.0800 to allow for inclusion of additional information in the application needs summary.
2. Do not grant the variance.
3. Take some other action.

B. Substantial Completeness of the Application

1. Accept the application as substantially complete and direct the applicant to respond to reasonable requests regarding the project.
2. Decline to accept the application as substantially complete at this time, direct the applications to submit a supplemental filing addressing the specific issues identified.
3. Take some other action.

C. Procedural Treatment of the Application

1. Refer the matter to the Office of Administrative Hearings and request that the issues identified in the staff comments and recommendations above be considered by the Administrative Law Judge.
2. Require that a public hearing be held on issues related to the site permit application.
3. Take some other action.

D. Other Information, Requests and Directives

To ensure the efficient and thorough processing of the application, the Commission could incorporate the following items into the Notice and/or Order for this matter:

1. Include in its Order:
 - a. the name and telephone number of the Commission employee designated to facilitate citizen participation in the process;
 - b. a requirement that the applicants facilitate in every reasonable way the continued examination of the issues by the Department of Commerce;
 - c. a directive that Commission staff consult with the Administrative Law Judge in selecting suitable locations for hearings on the application; and
 - d. a directive that the applicants provide notice as outlined above.
2. Make some other decision deemed more appropriate.

Staff Recommendations: A.1, B.1, C.1, C.2 and D.1(a-d).

Appendix A – Project Site Map

