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October 11, 2013

Burl W. Haar, Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of the Application of Odell Wind Farm, LLC for a Large Wind Energy
Conversation System Site Permit (PUC Docket No. IP-6914/WS-13-843)

Re: Comments and Recommendation on Application Completeness

Dear Dr. Haar:

Attached are the review and comments of the Minnesota Department of Commerce Energy
Environmental Review and Analysis (EERA) staff in the above matter.

Odell Wind Farm, LLC has submitted an application pursuant to Minnesota Rule 7854.0400 for
a Site Permit for a 200 Megawatt wind project in Cottonwood, Jackson, Martin, and Watonwan
counties.

This filing was made on September 26, 2013, by:

Betsy Engelking
Vice President of Development
Geronimo Wind Energy, LLC d/b/a
Geronimo Energy, LLC
7650 Edinborough Way, Suite 725
Edina, Minnesota 55435

EERA staff is available to answer any questions the Commission may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Davis', is written over a light blue horizontal line.

Richard Davis, EERA Staff

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF
MINNESOTA DEPARTMENT OF COMMERCE
ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS STAFF**

DOCKET No. IP-6914/WS-13-843

Date: October 11, 2013

EERA Staff: Richard I. Davis651-539-1846

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

Issue(s) Addressed: These comments address whether the Application should be accepted as providing complete information per Minnesota Rule 7854.0500 sufficient to begin the Site Permit review process.

Additional documents and information can be found on the EERA website
<http://mn.gov/commerce/energyfacilities/Docket.html?Id=33584> or on eDockets
<https://www.edockets.state.mn.us/EFiling/search.jsp> (Year "13" and Number "843").

This document can be made available in alternative formats; i.e. large print or audio tape by calling (651)539-1530.

INTRODUCTION AND BACKGROUND

Odell Wind Farm, LLC (Applicant) filed an Application¹ with the Public Utilities Commission (Commission) for a Large Wind Energy Conversion System (LWECS) Site Permit on September 26, 2013, to build the Odell Wind Farm (Project) in Cottonwood, Jackson, Martin and Watonwan counties.

Odell Wind Farm, LLC is a wholly-owned subsidiary of Geronimo Wind Energy, LLC d/b/a Geronimo Energy, LLC (Geronimo). Geronimo has developed three operating wind energy projects in southern Minnesota, including the Prairie Rose Project in Rock County, Marshall Wind Farm in Lyon County, and Odin Wind Farm in Cottonwood and Watonwan counties.

¹ "Site Permit Application for an LWECS," (SPA) Odell Wind Farm, LLC, September 2013

The Applicant has indicated that the Project is exempt from the Certificate of Need (CN) requirements of a large energy facility as it is part of a competitive bid process as a resource for Northern States Power d/b/a Xcel Energy (Xcel) to meet requirements under Minnesota Statutes Section 216B.243, subd. 9. A power purchase agreement (PPA) was executed between Odell and Xcel in July 2013, and on July 16, 2013, Xcel filed a petition for approval of the Odell PPA in Docket No. E002/M-13-603.

Project Location

Bingham Lake and Mountain Lake are the closest communities to the Project. Portions of the Project are located in Lakeside and Mountain Lake townships in Cottonwood County, in Christinia and Kimball townships in Jackson County, in Cedar Township in Martin County, and Odin Township in Watonwan County. The proposed Project is located in a portion of the state that has seen extensive development of LWECS over the past 5 years.

Project Description

The Project Boundary encompasses approximately 34,592 acres, of which approximately 20,780 acres are currently leased for the Project.

The Project for which a permit is being requested includes:

1. A wind turbine layout consisting of up to 133 turbines, depending on turbine specifications; the application describes the possible use of Goldwind GW87/1500 1.5 MW, General Electric 1.6-87 1.6 MW, or Gamesa G97 2.0 MW wind turbines; and
2. Associated facilities, including gravel access roads, an electrical collection system, temporary and permanent meteorological towers, a Project substation facility, a temporary batch plant and staging/laydown construction area, and possibly an O&M building.

The Project requires an associated 115 kV transmission line and a 345/115 kV substation adjacent to the point of grid interconnection. A separate route plan permit application will be filed by the Applicant for the transmission facilities.

The Applicant's goal is to commence construction of the Project in April or May 2014, and achieve commercial operation no later than December 2015.

REGULATORY PROCESS AND PROCEDURE

A site permit from the Commission is required to construct an LWECS, which is any combination of wind turbines and associated facilities with the capacity to generate five megawatts or more of electricity. This requirement became law in 1995. The Minnesota Wind Siting Act is found at Minnesota Statutes Chapter 216F. The rules to implement the permitting requirements for LWECS are in Minn. Rule 7854.

Application Acceptance

Application acceptance is guided by Minnesota Rule 7854.0600. The Commission may elect to accept, conditionally accept, or reject the Application. If the Commission conditionally accepts or rejects an application, the Commission must advise the Applicant of the deficiencies in the application and the manner in which the deficiencies can be addressed.

Within 15 days of LWECS site permit application acceptance, the Applicant is required to provide notice of application acceptance. In addition to publishing this notice in a newspaper of general circulation in each county, the notice is distributed to the county board, each city council and each township board in each county where the LWECS is proposed to be located. This notice is also posted on eDockets and on the Department of Commerce Energy Environmental Review and Analysis (EERA) website. In practice this notice has been developed by the Applicant with assistance from EERA staff to ensure that the notice meets the requirements and intent of Minnesota Rule 7854.0600.

As a part of the notice requirements of Minnesota Rule 7854.0600, the Applicant must provide a copy of the accepted Application to each landowner within the site. The Applicant is also required to distribute the accepted application to the Minnesota Historical Society, the regional development commission(s) within which the LWECS is proposed to be located, the auditor of each county, and the clerk of each city and township in which the LWECS is proposed to be located. The auditors and clerks are to retain the application and make it available for public inspection on request. In practice, the Applicant also provides a copy of the application to anyone requesting a copy. The Applicant is responsible for maintaining the application distribution list.

In previous projects, EERA staff has also distributed copies of the application to technical representatives from state agencies (e.g., Pollution Control Agency, Department of Natural Resources, Department of Transportation, Board of Water and Soil Resources, Department of Agriculture, and Department of Health) that may have permitting or review authority over the project and established a comment period to allow for public and agency input to its technical analysis of whether a draft site permit should be issued.

Preliminary Determination on Draft Site Permit

Minnesota Rule 7854.0800 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.

EERA ANALYSIS AND COMMENTS

The Application has been reviewed by EERA staff pursuant to the requirements of Minnesota Rule 7854 (Wind Siting Rules). The Application provides the information required by Minnesota Rule 7854.0500 in a format that all members of the public can access.

The Applicant developed the Application with the assistance of the EERA guidance document² for LWECS permits. This guidance for site permitting provides applicants and preparers of LWECS applications with information on how to prepare a complete site permit application, including information on the permitting process, pre-application consultation, and how to submit an application. While this document is a useful tool for new developers, it is also helpful to developers with experience in Minnesota, like Geronimo, to review current policies, guidelines and expectations as to necessary study standards.

The Applicant submitted a draft Application for review on July 25, 2013. EERA reviewed the document and provided comments and recommendations to the Applicant on August 7, 2013. The Applicant edited and supplemented the Application following EERA's initial review before making their official filing on September 26, 2013. EERA finds the updated Application generally addresses the EERA comments and recommendations provided to the Applicant on August 7, 2013.

Overall, the Application includes the contents anticipated by rule; however, EERA notes two areas that it believes must be addressed before the preliminary determination on a draft site permit is made.

Section 8.6 Cultural and Archaeological Resources, sub-section 8.6.2 Impacts. The Applicant states that the State Historical Preservation Office (SHPO) recommends additional surveys be completed, and the Applicant commits to complete surveys for the areas to be disturbed by the Project. However, the Applicant has not indicated when these surveys will be conducted and who will conduct them. EERA staff notes that these surveys must be conducted prior to Project construction, and should be conducted by a cultural resources professional or registered archaeologist.

Section 8.19 Wildlife and Appendices F and G. The Applicant has also performed a thorough job of developing the site characteristics (Tier 2) and has partially conducted surveys (Tier 3) in cooperation with the Minnesota Department of Natural Resources (MN DNR) and the U.S. Fish and Wildlife Service (USFWS), and included the Wildlife Assessment and Field Studies Report in the Application appendices.

However, EERA staff notes that some Tier 3 pre-construction surveys, bat acoustic survey and raptor survey, are currently being completed and 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 states that the pre-construction surveys will be conducted to better understand potential project risks to avian and bat species. The Applicant also states that site layout design will be considered as a measure to minimize risks to avian and bats species.

² "Application Guidance for Site Permitting of Large Wind Energy Conversion Systems (LWECS) in Minnesota," EFP, August 5, 2010

The results and analysis of the currently on-going Tier 3 pre-construction surveys are critical to the evaluation of the impacts of the project. The Applicant should evaluate all pre-construction survey data, determine potential Project risks to avian and bat species, consult with appropriate agencies, and adjust site layout prior to the draft Site Permit stage in the permitting process.

The Application does include an Avian and Bat Protection Plan (ABPP). EERA notes that the ABPP indicates post-construction avian and bat fatality surveys will be coordinated with MN DNR and USFWS during the site permitting process. EERA believes that the post-construction fatality survey section of the ABPP should be updated prior to draft Site Permit issuance to reflect agency coordination, specific fatality monitoring commitments, and specific formal fatality monitoring protocol to be utilized at the Project.

EERA Conclusions and Recommendation

EERA concludes that the Application provides complete information per Minnesota Rule 7854.0500 sufficient to begin the Site Permit review process. 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.

However, EERA recommends the Commission accept the Application as complete with the understanding that the permitting process will not progress to the 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. The study reports must be submitted to EERA, MN DNR, and USFWS no later than December 31, 2013, in order to achieve the permit schedule milestones EERA has outlined below.

Rule Variance – Draft Permit Issuance

EERA is requesting a rule variance, that the Commission vary the procedural requirements of Minn. Rule 7854.0800, which requires a preliminary determination on whether to issue a Site Permit within 45 days of application acceptance. EERA believes 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.

Minnesota Rules, part 7829.3200 allows 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.

EERA staff believes 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-factor variance test.

First, the enforcement of the rule would impose an excessive burden on EERA staff because of the short time available between application acceptance and the time a draft Site Permit must be addressed by the Commission. EERA staff practice over the past few years has been to include an additional comment period to allow for public and governmental agency input on the site permit application prior to the Commission's preliminary determination on whether a site permit may be issued. EERA staff believes that 45 days is inadequate to allow a reasonable comment period, review any comments received, and, where appropriate, incorporate comments into the draft Site Permit for Commission consideration.

Second, granting the variance will not adversely affect the public interest. Granting the variance would better serve the public interest by allowing adequate opportunity for interested persons to review and comment on the application.

Third, EERA staff does not believe granting the variance would conflict with standards imposed by law.

EERA staff is not aware of any opposition to the draft Site Permit variance being requested, and the variance has been a typical practice in the most recent wind dockets under consideration by the Commission.

Process Recommendation – Project Referral to the Office of Administrative Hearings (OAH)

In previous wind cases, it has been typical practice to not refer the matter to the OAH, but instead request the OAH to preside over the public hearing and provide a summary of comments received. However, recent past practice in high voltage transmission line (HVTL) cases has been to 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.

EERA staff recommends that the Commission delay the decision on whether to refer the project to the OAH until the Draft Site Permit step. Development of the draft Site Permit will 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 can 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.

Odell LWECS Site Permit Schedule and Process

Estimated Timeframe	Process Step
9/26/2013	Application Submitted
Nov 2013	Commission Action on Acceptance
Nov 2013	EERA Issues Notice of Comment Period on Issues for Draft Permit
Dec 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, MN 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