

November 24, 2014

Dr. Burl Haar
Minnesota Public Utilities Commission
121 Seventh Place East
Suite 350
St. Paul MN 55101-2147

Re: *In the Matter of the Joint Application of Black Oak Wind, LLC and Getty Wind Company, LLC for a Certificate of Need for an up to 82 MW Large Wind Project in Stearns County, Minnesota*
Docket No. IP6853 and IP6866/CN-11-471

Dear Dr. Haar:

Enclosed please find the Reply Comments and Objections to Residents' Petition for Contested Case Hearing and Intervention of Black Oak Wind, LLC and Getty Wind Company, LLC that were e-filed today in the above referenced matters.

Please let me know if you have any questions or concerns regarding this filing.

Sincerely,

/s/ *Lindsey A. Hemly*

Lindsey A. Hemly
Attorney
Direct Dial: 612.492.7454
Email: lhemly@fredlaw.com

Attorneys & Advisors
main 612.492.7000
fax 612.492.7077
www.fredlaw.com

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota
55402-1425

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

Beverly J. Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy L. Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Joint Application of Black Oak Wind, LLC and Getty Wind Company, LLC for a Certificate of Need for an up to 82 MW Large Wind Project in Stearns County, Minnesota

Docket No. IP6853 and IP6866/CN-11-471

**REPLY COMMENTS AND
OBJECTIONS TO RESIDENTS'
PETITION FOR CONTESTED
CASE HEARING AND
INTERVENTION OF BLACK
OAK WIND, LLC AND GETTY
WIND COMPANY, LLC**

I. INTRODUCTION.

On December 31, 2012, the Minnesota Public Utilities Commission (“Commission”) issued a joint Certificate of Need to Black Oak Wind, LLC (“Black Oak”) and Getty Wind Company, LLC (“Getty”) for the up to 82 MW Black Oak and Getty Wind Projects located in Stearns County, Minnesota (the “Projects”). On October 28, 2014, Black Oak and Getty submitted a petition to the Commission seeking approval of an extension of the Projects’ in-service date to December 31, 2015 without rehearing or recertification. In the alternative, Black Oak and Getty requested that the Commission find that Black Oak and Getty are exempt from the certificate of need requirements pursuant to the exemption provided under Minn. Stat. § 216B.243, subd. 9.

The Commission requested comments on these requests, asking commenters to address the following open topics:

- Should the Commission grant the petition to allow a delayed in-service date to December 31, 2015 without additional hearings?
- Should the Commission find that the Black Oak and Getty Projects are exempt from the certificate of need requirements pursuant to Minn. Stat. § 216B.243, subd. 9 by determining that the facility is a reasonable and prudent approach to meeting Minnesota Municipal Power Agency’s renewable energy obligations?

The Commission received comments from the Minnesota Department of Commerce Division of Energy Resources (DOC-DER) recommending that the Commission determine that the proposed in-service date change is acceptable without recertification. The Commission also received comments from “Residents of Getty and Raymond Townships” (the “Residents”) petitioning the Commission for a contested case hearing, petitioning the Commission to

intervene in this proceeding, and requesting that the Commission deny Black Oak and Getty's petition for extension.

Black Oak and Getty respectfully request that the Commission deny the Residents' petitions for a contested case hearing and intervention and follow the recommendation of DOC- DER to approve the requested change in in-service date without recertification or rehearing. The Residents have not made the required showing for a contested case hearing, and their comments do not support a Commission determination that the requested in-service date extension, if known at the time of the need decision on the facility, would have resulted in a different decision under the criteria specified in Minnesota Rule 7849.0120. Thus, rehearing is not warranted. Further, the Residents have submitted an untimely request for intervention, and the request must be denied.

II. THE COMMISSION SHOULD DENY THE RESIDENTS' REQUEST FOR A CONTESTED CASE HEARING.

Minnesota Rule 7829.1000 states that "if a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings" ¹

With respect to a statutory or rule right to a hearing under part 7829.1000, Minnesota Rule 7849.0400, subp. 2(H) states that when an applicant has proposed changes to the size, type or timing of a proposed facility in a certificate of need proceeding, a right to further hearings exists "if and only if [the Commission] determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 7849.0120." There is no other statutory or rule right to a hearing.

Neither the arguments presented in the Residents' Petition for a Contested Case hearing nor Residents' comments provide any facts or evidence supporting a determination that, pursuant to Minnesota Rule 7849.0400, subp. 2(H), rehearing or recertification is required. The Residents simply question the existence of Black Oak and Getty's power purchase agreement (PPA) with the Minnesota Municipal Power Agency (MMPA) and the Projects' position in the MISO queue. While neither Black Oak and Getty nor MMPA are required to file the PPA, evidence of the PPA is available in Black Oak's and Getty's site permit dockets (Docket Nos. IP6853/WS-10-1240 and IP6866/WS-11-831). Both the Projects' generator interconnection agreement and the System Impact Study portion of the 2014 restudy, referenced in Black Oak and Getty's October

¹ The Residents have requested a contested case hearing pursuant to Minnesota Rule 7854.0900, subp. 5, which addresses requests for contested case hearings on site permit applications. This provision, however, is not applicable in this certificate of need proceeding.

28, 2014 Petition To Extend Certificate of Need, are available on the MISO website.² Residents have not raised material issues of fact, and when applying the Minnesota Rule 7849.0120 criteria, which relate to the adequacy, reliability and efficiency of the energy supply; alternatives to the Projects; and the benefits of the Projects to society, Black Oak and Getty's PPA and interconnection status support, rather than undermine, the requested change in in-service date.

Further, the Residents' arguments do not raise any other significant issues requiring the Commission to order contested case proceedings. While not related to the requested change in in-service date, the Residents question the common ownership of the Projects, as discussed in the *Notification of Acquisition Affecting Ownership of Getty Wind Company, LLC* e-filed by Getty on November 14, 2014. Black Oak and Getty made clear in their initial filing and several subsequent filings in this docket that the potential existed for the Projects to come under common ownership at a future date.³ It was that potential for common ownership that prompted Black Oak and Getty to jointly file an application for a certificate of need, which arguably, would not be required if the Projects had proceeded independently. The acquisition discussed in Getty's November 14, 2014 notice letter is not a significant unresolved issue requiring contested case proceedings. Moreover, the potential sale of 100% of the membership interest in Black Oak Wind, LLC to Southern Turner Renewable Energy, LLC, cited by Residents as a potential change in ownership, was not completed.

Additionally, the Residents emphasize that the Getty Project may no longer qualify as a Community-Based Energy Development (C-BED) project; however, this emphasis is misplaced. Getty's qualification as a C-BED project was not relevant to the Commission's initial certificate of need determination, was not relevant to the Projects' execution of a power purchase agreement with MMPA and is not relevant to Black Oak and Getty's request for a delayed commercial operation date. While Getty indicated that it intended to seek C-BED qualification in the certificate of need application, stating that "[t]he Getty Project currently plans to seek qualification as a Community-Based Energy Development ("C-BED") project pursuant to Minn. Stat. § 216B.1612", Black Oak and Getty did not rely on Getty's C-BED status in obtaining the

² The generator interconnection agreement is available at https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=184065 (last accessed on November 23, 2014). The System Impact Study is available at https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=188073 (last accessed on November 23, 2014).

³ See, e.g., Request for Exemption from Certain Application Content Requirements, *In the Matter of the Joint Application of Black Oak Wind, LLC and Getty Wind, LLC for a Certificate of Need for an up to 82 MW Large Energy Facility in Stearns County, Minnesota*, Docket No. IP6853 and IP6866/CN-11-471, p. 4-6 (May 24, 2011); Reply Comments, *In the Matter of the Joint Application of Black Oak Wind, LLC and Getty Wind, LLC for a Certificate of Need for an up to 82 MW Large Energy Facility in Stearns County, Minnesota*, Docket No. IP6853 and IP6866/CN-11-471, p. 1 (June 24, 2011); Joint Application for Certificate of Need for the Black Oak and Getty Wind Projects in Stearns County, Minnesota, *In the Matter of the Joint Application of Black Oak Wind, LLC and Getty Wind, LLC for a Certificate of Need for an up to 82 MW Large Energy Facility in Stearns County, Minnesota*, Docket No. IP6853 and IP6866/CN-11-471, p. 3 (October 11, 2011).

PPA. Specifically, the Projects' PPA with MMPA is not a C-BED PPA and does not require the Projects to have C-BED status. Further, the Commission did not rely on or reference C-BED status in granting the Certificate of Need.

The remaining arguments presented by the Residents are not pertinent to the requested change in in-service date or the Certificate of Need and are unsupported by facts in the record.

III. THE COMMISSION SHOULD DENY THE RESIDENTS' PETITION FOR INTERVENTION.

The Residents' Petition for Intervention ("Intervention Petition") is made under the provisions of Minnesota Rule 1400.6200, subp. 1 and 1405.0900, subp. 1, but these provisions are not applicable to the current proceeding. Minnesota Rule 1400.6200, subp. 1 applies to interventions in contested case proceedings conducted by the Office of Administrative Hearings (OAH). Minnesota Rule 1405.0900, subp. 1 applies to intervention in hearings conducted by the OAH involving power line and power plant siting. The petition to change Black Oak and Getty Projects' in-service date under their Certificate of Need is currently before the Commission and involves neither of the cited types of proceedings or provisions.

Rather, Minnesota Rule 7829.0800, applicable to intervention requests in Commission proceedings, provides that "[a] person who desires to become a party to a proceeding shall file a petition to intervene *within the time set in this chapter.*"⁴ With respect to timing of intervention in certificate of need proceedings, Minnesota Rule 7829.2550 provides that "[t]he commission shall entertain a petition to intervene until the matter is referred to the Office of Administrative Hearings for a contested case proceeding or until the commission issues a notice under part 7829.1200, subpart 3, stating its intention to decide the matter on the basis of an informal or expedited proceeding."⁵ The Commission issued its order directing the use of informal review process to develop the record on December 15, 2011. Therefore, the Intervention Petition is time barred.

To date, the Residents have been active participants in these certificate of need proceedings, submitting comments and attending public meetings to provide input with respect to the Projects. As noted by the Residents, "[f]or over four years now, members of Residents of Getty and Raymond Townships have been steadfastly involved in the Black Oak and Getty wind project dockets, making and filing comments, attending public meetings and hearings, [and] participating in township and county proceedings."⁶ Even without being granted full party status in these proceedings, the Residents have had the opportunity to adequately represent their interests. Granting the Residents full party status at this late time in the proceedings would do

⁴ Emphasis added.

⁵ Because the Commission did not refer the matter for a contested case proceeding, the rules of the Office of Administrative Hearings do not control intervention rights.

⁶ Residents of Getty and Raymond Townships Petition for Intervention, *In the Matter of the Joint Application of Black Oak Wind, LLC and Getty Wind, LLC for a Certificate of Need for an up to 82 MW Large Energy Facility in Stearns County, Minnesota*, Docket No. IP6853 and IP6866/CN-11-471, p. 2 (November 17, 2014).

little to further advance those interests. Further, because the Residents have been actively aware of and involved in these proceedings, the Commission cannot overlook their failure to timely submit a petition for intervention, but rather, their Intervention Petition must be denied.

IV. CONCLUSION

Black Oak and Getty respectfully request that the Commission deny the Residents' petition for a contested case hearing, deny the Residents' petition for intervention, and approve the requested change in in-service date without recertification or rehearing. The change in commercial operation date would not reasonably have resulted in a different decision under the criteria specified in Minnesota Rule 7849.0120. Additionally, Black Oak and Getty request, in the alternative, that if the Commission determines that additional hearings are necessary, the Commission find that the Projects are exempt from certificate of need requirements.

Dated: November 24, 2014

Respectfully submitted,

/s/ Lindsey A. Hemly

Lindsey A. Hemly (#0390347)

Christina K. Brusven (#388226)

FREDRIKSON & BYRON, P.A.

200 South Sixth Street, Suite 4000

Minneapolis, Minnesota 55402-1425

Telephone: (612) 492-7454

Fax: (612) 492-7077

**Attorneys for Black Oak Wind, LLC and Getty
Wind Company, LLC**

AFFIDAVIT OF SERVICE


*In the Matter of the Joint Application of Black Oak Wind, LLC and
Getty Wind Company, LLC for a Certificate of Need for an up to 82 MW
Large Wind Project in Stearns County, Minnesota*
Docket No. IP6853 and IP6866/CN-11-471

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

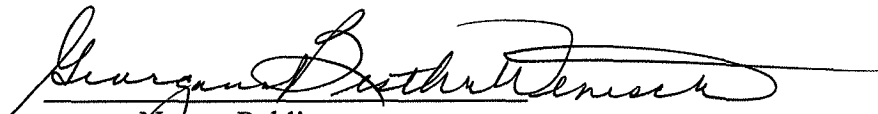
Kristen A. Swenson, of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being duly sworn, says that on the 24th day of November, 2014, she efiled with the Minnesota Public Utilities Commission the following:

1. **Reply Comments and Objections to Residents' Petition for Contested Case Hearing and Intervention of Black Oak Wind, LLC and Getty Wind Company, LLC; and**
2. **An Affidavit of Service.**

A copy has also been served on the service list of record.


Kristen A. Swenson

Subscribed and sworn to before me
on November 24, 2014.


Notary Public



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	No	OFF_SL_11-471_Official
Angie	Berg	angie.berg@co.stearns.mn.us	Stearns County	Administration Ctr, Rm 343 705 Courthouse Square St. Cloud, MN 56303	Electronic Service	No	OFF_SL_11-471_Official
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_11-471_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_11-471_Official
Kate	Frantz	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_11-471_Official
Travis	Germundson	travis.germundson@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_11-471_Official
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_11-471_Official
Lindsey	Hemly	lhemly@fredlaw.com	Fredrikson & Byron, P.A.	200 S Sixth St Ste 4000 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_11-471_Official
Kari	Howe	kari.howe@state.mn.us	DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul, MN 55101	Electronic Service	No	OFF_SL_11-471_Official
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_11-471_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_11-471_Official
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	No	OFF_SL_11-471_Official
Susan	Medhaug	Susan.medhaug@state.mn.us	Department of Commerce	Suite 500, 85 Seventh Place East St. Paul, MN 551012198	Electronic Service	No	OFF_SL_11-471_Official
Debra	Moynihan	debra.moynihan@state.mn.us	MN Department of Transportation	395 John Ireland Blvd MS 620 St. Paul, MN 55155-1899	Electronic Service	No	OFF_SL_11-471_Official
Carol A.	Overland	overland@legalelectric.org	Legalelectric - Overland Law Office	1110 West Avenue Red Wing, MN 55066	Electronic Service	No	OFF_SL_11-471_Official
Bob	Patton	bob.patton@state.mn.us	MN Department of Agriculture	625 Robert St N Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_11-471_Official
Michele	Ross	michele.ross@state.mn.us	Department of Health	625 N Robert St Saint Paul, MN 55101	Electronic Service	No	OFF_SL_11-471_Official
Jennie	Ross	jennie.ross@state.mn.us	Minnesota Department of Transportation	395 John Ireland Boulevard, MS 620 St. Paul, MN 55155	Electronic Service	No	OFF_SL_11-471_Official
Jamie	Schrenzel	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Saint Paul, MN 55155	Electronic Service	No	OFF_SL_11-471_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Patrick	Smith	patrick@geronimowind.com	Geronimo Wind Energy, LLC	7650 Edinborough Way, Ste 725 Edina, MN 55435	Electronic Service	No	OFF_SL_11-471_Official