

August 12, 2019

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. IP-7002/CN-19-154

Dear Mr. Wolf:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

*Application of Three Waters Wind Farm, LLC for a Certificate of Need for the up to 201 MW Three Waters Wind Project in Jackson County.*

The Application was filed on behalf of Three Waters Wind Farm, LLC on July 31, 2019 by:

Jeremy P. Duehr  
Fredrickson and Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota, 55402-1425

The Department recommends that the Minnesota Public Utilities Commission (Commission) determine that the Application is complete pending submittal of additional information.

Sincerely,

/s/ MICHAEL N. ZAJICEK  
Rates Analyst

MNZ/ja  
Attachment

## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. IP-7002/CN-19-154

#### I. BACKGROUND

On February 12, 2019 Three Waters Wind Farm, LLC (Three Waters or the Applicant) filed the Company's *Request for Exemption from Certain Certificate of Need Application Content Requirements* (Exemption Petition).

On February 20, 2019 the Minnesota Public Utilities Commission (Commission) issued its *Notice of Comment Period on Certificate of Need Exemption Requests* (Notice).

On March 1, 2019 the Department of Commerce, Division of Energy Resources (Department) filed comments on the Exemption Petition, recommending approval of Three Waters' data exemption requests with conditions.

On March 13, 2019 Three Waters filed reply comments, agreeing with the Department's recommendations.

On March 26, 2019 the Commission issued its Order (March 26 Order) adopting the Department's recommendations with respect to the Exemption Petition and granting the following exemptions:

1. The following exemptions are approved conditioned upon DCW providing equivalent data:
  - 7849.0250(B) 4: Description of Certain Alternatives
  - 7849.0250(D): Map of the Applicant's System
  - 7849.0270: Peak Demand and Annual Consumption Forecast
  - 7849.0280: System Capacity
  - 7849.0300: Consequences of Delay – System
  - 7849.0340: The Alternative of No Facility
  
2. The following exemptions are approved as proposed:
  - 7849.0240, subp. 2(B): Promotional Activities
  - 7849.0250(B)(1), (2), (3) and (5): Description of Certain Alternatives
  - 7849.0250(C)(1)–(6), (8), and (9): Availability of Alternatives to the Facility
  - 7849.0250(C)(7): Effect of Project on Rates System-wide
  - 7849.0290: Conservation Programs
  - 7849.0330: Alternatives Involving and LHVTL

On July 31, 2019 Three Waters filed its *Certificate of Need Application* (Application) for the proposed Three Waters wind generating facility.

On August 6, 2019, the Commission issued a *Notice of Comment Period on Certificate of Need Application Completeness* requesting comments on completeness by August 20, 2019.

## II. DEPARTMENT ANALYSIS

Minnesota Statutes, section 216B.2421, subd. 2 (1) defines a large energy facility as “any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system.” Further, Minnesota Statutes, section 216B.243, subd. 2 states that, “no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission.” The Application indicates that Three Waters plans to construct the Three Waters Wind Farm (Project), a wind energy generating facility of approximately 201 MW in Jackson County, Minnesota. Therefore, a Certificate of Need (CN) is required.

### A. COMPLETENESS REVIEW

Minnesota Rules, parts 7849.0240 to 7849.0340 contain the filing requirements for a CN application for a large electric generating facility. The Department reviewed the Application for completeness considering the rule requirements and exemptions granted by the Commission in its March 26 Order.

At the beginning of the Application, Three Waters provided an “Application Content Checklist” table, listing each filing requirement, and indicating whether an exemption was granted and/or the location within the Application where the relevant information can be found Application.<sup>1</sup> The Department reviewed this table and notes that there are several instances where the wrong section is listed, although the required information is present elsewhere in the petition. Specifically, the Department notes that the information required by Minnesota Rules, part 7849.0210 is located in section 2.5, the information required by Minnesota Rules, part 7849.0250 (B) 5 is located in section 5.2.1.10, and the information required by Minnesota Rules, part 7849.0250 (C) 4 and 5 are in 5.3.4 and 5.3.5 respectively rather than the location listed in the table in the Application.

The Department concludes that Three Waters met the completion requirements with one exception, as described below.

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<sup>1</sup> Pages 8-10 of the PDF of the CN Petition, these pages are not numbered using the Applicants page numbering system within the filing.

Minnesota Rules, part 7849.0250 (B) requires an applicant to provide a discussion of the availability of alternatives to the facility, including but not limited to:

- 1) purchased power;
- 2) increased efficiency of existing facilities, including transmission lines;
- 3) new transmission lines;
- 4) new generating facilities of a different size or using a different energy source; and
- 5) any reasonable combinations of the alternatives listed in sub items (1) to (4).

The Commission's March 26 Order granted an exemption to Minnesota Rules, part 7849.0250 (B) 1, 2, 3, and 5 and partial exemption to Minnesota Rules, part 7849.0250 (B) 4. The Commission granted Three Waters an exemption to Minnesota Rules, part 7849.0250 (B) 4 to the extent an alternative cannot address the need for renewable power.

As to (4) above, Three Waters provided information regarding other renewable fuel sources as required, but did not address Minnesota Municipal Power Agency's<sup>2</sup> (MMPA's) options as to a different size project (larger and smaller). Therefore, the Department recommends that the Commission condition its completeness finding upon Three Waters filing the missing information required by Minnesota Rules, part 7849.0250 (B) 4, as modified by the Commission's March 26 Order.

The Department notes that any additional alternative discussed in detail pursuant to the requirements of Minnesota Rules, parts 7849.0250 (B) would need to be considered in response to Minnesota Rules, parts 7849.0250 (C), 7849.0310 and 7849.0320, as those rule parts involve information on alternatives.

#### *B. PROCESS REVIEW*

As to the proper process to use for the proceeding, the Department does not anticipate significant disputes that would necessitate a contested case. Thus, the Department does not request that the Commission order a contested case proceeding at this time. Based on the information available, it appears that reliance on the Commission's normal process of formal comments and reply comments will be sufficient to develop the issues in this proceeding. That said, the Department would not object to a Commission-ordered contested case if parties claim significant contested material facts and/or raise controversial issues.

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<sup>2</sup> Three Waters and MMPA entered into a power purchase agreement for up to 200 MW of the Project.

### **III. SUMMARY AND RECOMMENDATIONS**

The Department recommends that Three Waters provide the missing information required by Minnesota Rules, part 7849.0250 (B) 4 in reply comments, and any associated discussion pursuant to Minnesota Rules, parts 7849.0250 (C), 7849.0310 and 7849.0320. Once the missing information is filed, the Department recommends that the Commission find the Application to be complete.

The Department also recommends that the Commission evaluate the Application using the Commission's comment process.

/ja

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce**  
**Comments**

**Docket No. IP7002/CN-19-154**

Dated this **13<sup>th</sup>** day of **August 2019**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-154_Service List
Jeremy	Duehr	jduehr@fredlaw.com	Fredrikson & Byron, P.A.	200 South Sixth Street Suite 4000  Minneapolis, Minnesota 55402-1125	Electronic Service	No	OFF_SL_19-154_Service List
Kate	Fairman	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_19-154_Service List
Annie	Felix Gerth	annie.felix-gerth@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_19-154_Service List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_19-154_Service List
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_19-154_Service List
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_19-154_Service List
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_19-154_Service List
Susan	Medhaug	Susan.medhaug@state.mn.us	Department of Commerce	Suite 280, 85 Seventh Place East  St. Paul, MN 551012198	Electronic Service	No	OFF_SL_19-154_Service List
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_19-154_Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_19-154_Service List
Stephan	Roos	stephan.roos@state.mn.us	MN Department of Agriculture	625 Robert St N  Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_19-154_Service List
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, Minnesota 55155-4040	Electronic Service	No	OFF_SL_19-154_Service List
Mark	Wengierski	mark@scoutcleanenergy.com	Scout Clean Energy	4865 Sterling Dr Ste 200  Boulder, CO 80301	Electronic Service	No	OFF_SL_19-154_Service List
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_19-154_Service List