

December 15, 2020

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. IP7013/CN-19-408

Dear Mr. Seuffert:

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

In the Matter of the Application of Big Bend Wind, LLC, for a Certificate of Need, Site Permit, and Route Permit for an up to 308 MW Wind Farm and Associated 161 kV Transmission Line in Cottonwood, Martin, and Watonwan Counties

The Application was filed on November 9, 2020 by:

Christina K. Brusven  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402

The Department **recommends that the Minnesota Public Utilities Commission (Commission) determine that the Application is complete.** The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ MATTHEW LANDI  
Rates Analyst

ML/ar  
Attachment



## Before the Minnesota Public Utilities Commission

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

Docket No. IP7013/CN-19-408

#### I. BACKGROUND

On June 19, 2019, Big Bend Wind, LLC (BBW or the Applicant), an affiliate of Apex Clean Energy Holdings, LLC, submitted a *Request for Exemption from Certain Application Content Requirements and Rule 7829.2550 HVTL Notice Plan* (Exemption Petition) to the Minnesota Public Utilities Commission (Commission).

On July 8, 2019, the Commission issued its *Notice of Comment Period on Request for Exemptions from Certain Filing Requirements*.

On July 22, 2019, the Department of Commerce, Division of Energy Resources, Energy Regulation and Planning Group (Department, or DOC-DER) filed its comments on the Exemption Petition, recommending approval of BBW's data exemption requests with conditions.

On July 29, 2019, BBW filed its reply comments, agreeing with the Department's recommendations with respect to the data exemption requests.

On September 24, 2019, the Commission issued its Order (September 24 Order) adopting the Department's recommendations with respect to the Exemption Petition and approved the following full exemptions, conditional exemptions, and partial exemptions, respectively:

1. The Commission grants exemptions to the following rules as requested by Applicants:
  - a. 7849.0250 (B) (1)
  - b. 7849.0250 (D)
  - c. 7849.0290
  - d. 7849.0330
2. The Commission grants exemptions to the following rules on the condition that if a power purchase agreement is executed prior to application submittal or during the pendency of the certificate of need proceeding, the Applicants must provide equivalent data from any purchaser or any alternative data proposed by the Applicant:
  - a. 7949.0240, subp. 2 (B)
  - b. 7849.0250 (B) (2), (3), and (5)
  - c. 7849.0250 (C) (7)
  - d. 7849.0270
  - e. 7849.0280

- f. 7849.0300
  - g. 7849.0340
- 3. The Commission grants exemptions to the following rules, such that the information to be provided is limited to renewable, sustainable, or clean energy alternatives:
  - a. 7849.0250 (B) (4)
  - b. 7849.0250 (C) (1) to (6), (8), and (9)

On November 9, 2020, BBW filed its *Certificate of Need Application for a Large Wind Energy Conversion System* (Application) for the up to 308 MW Big Bend Wind, LLC wind generating facility and an approximately 18-mile 161 kV transmission line.<sup>1</sup>

On November 23, 2020, the Commission issued a *Notice of Comment Period* (Notice) requesting comments on the completeness of the Application. The Notice listed the following topics as open for comment:

- Does the certificate of need, site permit, and route permit applications contain the information required under Minnesota Rules 7849.0220, subp. 1 and 2, Minn. R. 7854.0500, and Minn. R. 7850.3100, respectively?
- Should an advisory task force be appointed for the route permit application?
- Are there any contested issues of fact with respect to the representations made in the applications?
- Should the certificate of need application be evaluated using the Commission's informal process or referred to the Office of Administrative Hearings (OAH) for a contested case hearing?
- Should the site permit application be referred to the OAH for a contested case hearing?
- Should the environmental report required under the certificate of need process be combined with the environmental assessment required for the transmission line?
- Should the certificate of need, site permit, and route permit applications be processed jointly (i.e., referred to OAH for joint contested case proceedings, joint public information meetings, and joint environmental review)?
- Should the Commission hold joint proceedings on the Big Bend Wind and Red Rock Solar projects?
- Are there other issues or concerns related to this matter?

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<sup>1</sup> [Big Bend Wind Certificate of Need Application](#), dated November 9, 2020, Docket No. IP7013/CN-19-408 (Application).

The Department provides comments below.

## **II. DEPARTMENT ANALYSIS**

### *A. CN REVIEW PROCESS*

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 BBW plans to construct the Big Bend Wind project, a wind energy generating facility of up to 308 megawatts (MW) and an associated 18-mi 161 kV transmission line in Cottonwood, Martin, and Watonwan Counties, MN. Therefore, a CN is required.

The Commission’s review of CN applications primarily consists of two steps:

1. Determine whether the application meets certain content requirements;
2. Based on a complete application, determine whether the facility is needed, and if so, grant the CN.

At this stage in BBW’s CN proceeding, the Commission is on the first step.

The Department’s Energy Environmental Review and Analysis group (DOC-EERA) provides analysis related to site permit applications and is a separate regulatory process from the DOC-DER analysis of certificate of need applications.

### *B. CONTENT REQUIREMENTS FOR BIG BEND WIND*

Minn. R. 7849.0220, subp. 1, states that each CN application “shall include all of the information required by parts 7849.0240, 7849.0250, and 7849.0270 to 7849.0340.” However, Minn. R. 7849.0200, subp. 6, allows for exemptions from any of the content requirements of CN applications if the applicant demonstrates that the requirement is not necessary for determining whether the facility is needed.

The Department reviewed the Application for completeness considering the rule requirements and exemptions granted by the Commission in its September 24 Order. Below is a table that summarizes the Department’s completeness review of the Application, indicating what data and information is required by Minnesota Rules, the location of that data and information in the Application, whether BBW was granted an exemption to the applicable Minnesota Rule, and whether the Application contained the relevant data and information.

**Table 1: Filing Requirements Completeness Review**

MN Rule	Short Description	Exemption?	Location in Application	Complete?
7849.0240 (1)	Need Summary	No	3.0	Yes
7849.0240(2)(A)	Additional Considerations: Socially Beneficial Uses	No	3.2.1	Yes
7849.0240(2)(B)	Additional Considerations: Promotional Activities	Conditional	3.2.2	Yes
7849.0240(2)(C)	Additional Considerations: Future Development	No	3.2.3	Yes
7849.0250(A)(1)-(5)	Description of Project	No	5.1.1	Yes
7849.0250(B)(1)	Description of Alternatives: Purchased Power	Full	5.2.1.1	Yes
7849.0250(B)(2)	Description of Alternatives: Existing Facility Efficiencies	Conditional	5.2.1.2	Yes
7849.0250(B)(3)	Description of Alternatives: New Transmission	Conditional	5.2.1.3	Yes
7849.0250(B)(4)	Description of Alternatives: New Generating Facilities	Partial	5.1.2.4- 5.1.2.7	Yes
7849.0250(B)(5)	Description of Alternatives: Combinations	Conditional	5.2.1.11	Yes
7849.0250(C)(1)-(6)	Alternatives Details	Partial	5.3.1.1- 5.3.1.8 and Appendix A	Yes
7849.0250(C)(7)	Alternatives Details: Effect on Rates	Conditional	5.3.1.7	Yes
7849.0250(C)(8)-(9)	Alternatives Details	Partial	5.3.1.8, 5.3.1	Yes
7849.0250(D)	System Map	Full	5.4	Yes
7849.0270	Peak Demand and Annual Consumption Forecast	Conditional	6.0	Yes
7849.0280	System Capacity	Conditional	7.0	Yes
7849.0290	Conservation Programs	Full	8.0	Yes
7849.0300	Consequences of Delay	Conditional	9.0	Yes
7849.0310	Environmental Information	No	10.0	Yes
7849.0320	Generating Facilities Information	No	11.0	Yes
7849.0330	Transmission Facilities Information	Full	5.2.1.10	Yes
7849.0340	No-Facility Alternative	Conditional	5.2.1.9	Yes

The Department notes that this evaluation of the completeness of the Application does not affect its analysis regarding the merits of the Project, nor does it relieve BBW from providing any additional information requested by the Department.

**The Department recommends that the Commission determine that the Application is complete.**

### *C. PROCESS REVIEW*

In addition to the completeness of the Application, the Commission also listed the following topics as open for comment:

- Should the certificate of need application be evaluated using the Commission's informal process or referred to the Office of Administrative Hearings (OAH) for a contested case hearing?
- Should the certificate of need, site permit, and route permit applications be processed jointly (i.e., referred to OAH for joint contested case proceedings, joint public information meetings, and joint environmental review)?
- Should the Commission hold joint proceedings on the Big Bend Wind and Red Rock Solar projects?
- Are there other issues or concerns related to this matter?

#### *1. THE COMMISSION'S NORMAL PROCESS OF INFORMAL COMMENTS AND REPLY COMMENTS*

The Department does not anticipate significant disputes in this proceeding as it relates to the Department's need analysis. Therefore, the Department concludes that reliance on the Commission's normal process of informal comments and reply comments will be sufficient to develop the issues in this proceeding.

#### *2. JOINT PUBLIC HEARINGS*

Minnesota Statute section 216B.243, subd. 4 states the following:

Any person proposing to construct a large energy facility shall apply for a certificate of need and for a site or route permit under chapter 216E prior to construction of the facility. The application shall be on forms and in a manner established by the commission. In reviewing each application the commission shall hold at least one public hearing pursuant to chapter 14. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a

certificate of need and, if a joint hearing is held, a site or route permit. The commission shall designate a commission employee whose duty shall be to facilitate citizen participation in the hearing process. Unless the commission determines that a joint hearing on siting and need under this subdivision and section 216E.03, subdivision 6, is not feasible or more efficient, or otherwise not in the public interest, a joint hearing under those subdivisions shall be held.

Minn. Stat. §216B.243, subd. 4 expresses a preference for a joint public hearing (or hearings) of the site, route, and certificate of need applications. Accordingly, the Department expresses support for at least one joint public hearing be held for the certificate of need, site, and route permits. Joint public hearings may help the general public understand the full scope of the Project and facilitate more meaningful participation in the Commission's review of the Project. The Department will be available to participate in such a hearing (or hearings).

The Department maintains that the certificate of need application can be evaluated using the Commission's normal process of informal comments and reply comments.

### *3. JOINT REVIEW OF THE BIG BEND WIND AND RED ROCK SOLAR PROJECTS*

The Applicant requested that the Commission order a joint regulatory review process for the Big Bend Wind Route Permit, Site Permit, and Certificate of Need applications, and Red Rock Solar Site Permit and Certificate of Need applications.<sup>2</sup> The Applicant stated that the Big Bend Wind and Red Rock Solar projects are the state's first utility-scale hybrid renewable energy facility and shared transmission line. The Applicant argued that "holding a joint proceeding is in the public interest because it will make it easier for members of the public to participate in the proceedings, provide a comprehensive record of all benefits, impacts, and minimization measures related to this hybrid renewable energy project and improve administrative efficiency."<sup>3</sup>

In support of their request, the Applicants cited Minn. Stat. §216B.243, subd. 4 and Minn. R. 7489.1900, subp. 4. In review of the applicable Minnesota Statutes and Rules, the Department is not opposed to a joint regulatory review process. However, the Department maintains the conclusion that the Commission's normal process of informal comments and reply comments will be more efficient and less burdensome for participants for the evaluation of the certificate of need applications for both the Big Bend Wind and Red Rock Solar projects.<sup>4</sup> The Department is not opposed to evaluating the certificate of need applications for both the Big Bend Wind and Red Rock Solar projects in a joint regulatory review process.

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<sup>2</sup> Application, Section 2.6, at 3.

<sup>3</sup> *Id.*

<sup>4</sup> The Department similarly concluded that the Commission's normal process of informal comments and reply comments can be used to evaluate the Red Rock Solar, LLC project (Docket No. IP7014/CN-19-486).

**The Department recommends that the Commission require that at least one joint public hearing be held for the certificate of need, site, and route permits of both the Big Bend Wind and Red Rock Solar projects.**

*4. OTHER ISSUES*

The Department is not aware of any other issues or concerns related to this matter at this time.

**III. DEPARTMENT RECOMMENDATIONS**

The Department recommends that the Commission determine that the Application is complete.

The Department recommends that the Commission evaluate the Application using the Commission's normal process of informal comments and reply comments.

The Department recommends that the Commission require that at least one joint public hearing be held for the certificate of need, site, and route permits of both the Big Bend Wind and Red Rock Solar projects.

/ar



## **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. IP7013/CN-19-408 and IP7013/WS-19-619**

Dated this **15<sup>th</sup>** day of **December 2020**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	Yes	OFF_SL_19-408_CN-19-408
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-408_CN-19-408
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_19-408_CN-19-408
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_19-408_CN-19-408
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_19-408_CN-19-408
Lucas	Franco	lfranco@liunagroc.com	LIUNA	81 Little Canada Rd E  Little Canada, MN 55117	Electronic Service	No	OFF_SL_19-408_CN-19-408
Brenna	Gunderson	Brenna.gunderson@apexcleanenergy.com	Apex Clean Eenergy	8665 Hudson Blvd N Ste 110  Lake Elmo, MN 55042	Electronic Service	Yes	OFF_SL_19-408_CN-19-408
Kate M	Heins	kate.heins@apexcleanenergy.com	Apex Clean Energy	310 4th St NE Ste 200  Charlottesville, VA 22902	Electronic Service	Yes	OFF_SL_19-408_CN-19-408
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_19-408_CN-19-408
Dylan	Ikkala	dylan.ikkala@apexcleanenergy.com	Apex Clean Energy	8665 Hudson Blvd N Ste 110  Lake Elmo, MN 55042	Electronic Service	Yes	OFF_SL_19-408_CN-19-408

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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_19-408_CN-19-408
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_19-408_CN-19-408
Chris	Kunkle	chris.kunkle@apexcleanenergy.com	Apex Clean Energy	8665 Hudson Blvd North, Suite 110  Lake Elmo, MN 55042	Electronic Service	No	OFF_SL_19-408_CN-19-408
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_19-408_CN-19-408
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_19-408_CN-19-408
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_19-408_CN-19-408
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-408_CN-19-408
Haley	Waller Pitts	hwallerpitts@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000  Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_19-408_CN-19-408
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_19-408_CN-19-408

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Berdon	Baerg	bbaerg@msn.com		B&A Baerg Farms, LLC 4758 Watermark LN Sarasota, FL 34238	Electronic Service	No	SPL_SL_19-408_Project Contact List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Berdon	Baerg	bbaerg@msn.com		B&A Baerg Farms, LLC 4758 Watermark LN Sarasota, FL 34238	Electronic Service	No	SPL_SL_19-619_Project Contact List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	Yes	OFF_SL_19-619_WS-19-619
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-619_WS-19-619
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_19-619_WS-19-619
Brenna	Gunderson	Brenna.gunderson@apexcleanenergy.com	Apex Clean Eenergy	8665 Hudson Blvd N Ste 110  Lake Elmo, MN 55042	Electronic Service	Yes	OFF_SL_19-619_WS-19-619
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Dylan	Ikkala	dylan.ikkala@apexcleanenergy.com	Apex Clean Energy	8665 Hudson Blvd N Ste 110  Lake Elmo, MN 55042	Electronic Service	Yes	OFF_SL_19-619_WS-19-619
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_19-619_WS-19-619
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-619_WS-19-619
Haley	Waller Pitts	hwallerpitts@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000  Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_19-619_WS-19-619

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Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000  Minneapolis, MN 554021425	Electronic Service	Yes	OFF_SL_19-621_TL-19-621
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-621_TL-19-621
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_19-621_TL-19-621
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