

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION**

In the Matter of the Applications 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

MPUC Docket Nos. IP-7013/CN-19-408,
WS-19-619, and TL-19-621

MPUC Docket Nos. IP-7014/CN-19-486 and
GS-19-620

OAH Docket No. 60-2500-37376

In the Matter of the Applications of Red Rock Solar, LLC for a Certificate of Need and Site Permit for the up to 60 MW Solar Project in Cottonwood County

APPLICANTS' POST-HEARING BRIEF

INTRODUCTION

Big Bend Wind, LLC (“Big Bend Wind”) and Red Rock Solar, LLC (“Red Rock Solar”) and, together, the “Applicants”) submit this Post-Hearing Brief in support of the applications currently pending before the Minnesota Public Utilities Commission (“Commission”) related to the Big Bend Wind Project (“Wind Project”), related transmission line (“Transmission Line”), and the Red Rock Solar Project (“Solar Project” and, collectively, the “Projects”). There is generally no dispute that the records developed in the above-captioned proceedings support the Commission’s approval of the Projects. Likewise, the record demonstrates that Applicants have undertaken significant and meaningful coordination and outreach to identify, understand, and resolve concerns related to the Projects, particularly with respect to potential impacts on the Jeffers Petroglyphs Site (“Jeffers Site”). Accordingly, this Post-Hearing Brief will focus only on a small number of discrete issues related to permit conditions which are currently unresolved. In addition, as applicable, Applicants respond to comments filed after the close of the public comment period to which Applicants had not previously had an opportunity to respond.

BACKGROUND

The Applicants initially selected the vicinity of the Projects because of the quality of the wind/solar resource, landowner participation, and a point of interconnection. After initiating consultation with the Minnesota State Historic Preservation Office (“SHPO”), based on feedback from SHPO, Big Bend Wind conducted additional voluntary coordination with the Minnesota Historical Society (“MNHS”), interested Tribes, and other stakeholders concerning the proximity of the Wind Project to the Jeffers Site. Over the course of multiple years, Big Bend Wind modified the design and layout of the Wind Project to resolve concerns about potential impacts on the Jeffers Site. A detailed history of this coordination is provided in Section 8.7.2 of the Amended Site Permit Application. However, at the time the initial applications were filed, there remained disagreement and concern regarding potential effects to the Jeffers Site, particularly from MNHS, Upper Sioux Community (“Upper Sioux”), and the Lower Sioux Indian Community in the State of Minnesota (“Lower Sioux”) (together with Applicants, the “Parties”).¹

On August 10, 2021, the Commission held a planning meeting at the Jeffers Site, and after the conclusion of that meeting, the Parties took the opportunity to meet in person to discuss their concerns and try to reach resolution. As a result of this meeting, the Parties reached a Settlement Agreement pursuant to which Big Bend Wind revised the Wind Project layout, removing all turbines within 6.5 miles of the Jeffers Site and replacing some of the lost generation by siting five alternative turbines at new locations within the Project Area that are farther than seven miles from viewpoints on the Jeffers Site. Big Bend also created a variant of this layout that also removes two turbines (T19 and T20) within seven miles, which were also identified by the agency and tribes as additional locations they would prefer to be removed, if Big Bend Wind’s proposed alternative

¹ Ex. 332 at 59 (BB-Amended Site Application).

turbine locations are approved by the Commission.² With the changes reflected in the Settlement Agreement, Lower Sioux, Upper Sioux, and MNHS recommend that the Commission approve the Wind Project, and each party submitted testimony reflecting that position.³

The Settlement Agreement is a significant achievement and reflects the important balancing of interests that will become increasingly important as additional renewable energy is sited within the state. The Applicants are proud of these efforts and respectfully submits that the substantial record developed in this proceeding support issuing the Commission approvals needed for the Projects.

DISCUSSION

I. Wind Access Buffer Setback Waiver.

In general, the Commission's General Wind Permit Standards provide that turbines be set back at least five rotor diameters ("RD") from the boundary of a site control area on the predominant wind axis and three RD on the secondary wind axis.⁴ The wind access buffer setback is not required by statute or rule, nor is it standard in other jurisdictions. Big Bend Wind initially designed the Project to comply with the buffer. However, in the Settlement Agreement, Big Bend agreed to seek alternate locations for turbines within seven miles of the Jeffers Site, and the Parties acknowledged that this would require a waiver of the wind access buffer setback for four turbine locations. Consistent with the Parties' agreement, the Amended Site Permit Application included

² As discussed in Section I herein, two of the proposed alternate locations would require a waiver of the Commission's wind access buffer setback.

³ Ex. 603 at 5 (Larsen Direct); *see also* Exs. 700 (Savariego Direct) and 500 (Maijala Direct).

⁴ *Order Establishing General Wind Permit Standards*, In the Matter of Establishment of General Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts, Docket. No. M-07-1102 (Jan. 11, 2008).

four alternate turbine locations for which a waiver of the wind access buffer setback would be needed. After further coordination with landowners, Big Bend Wind reduced its requested waivers to only two turbine locations, A01 and A02. For turbine A01, the 5RD wind access buffer overlaps a non-participating parcel by 1.2 acres, primarily over a driveway;⁵ for turbine A02, the 5RD wind access buffer overlaps a non-participating parcel by 14.5 acres (over an agricultural field). The 3RD wind access buffer is on participating parcels for each location. Intervenor support the requested wind access buffer waivers, as well.⁶

Despite agreement amongst the Parties, on February 22, 2022, DOC-EERA filed “public hearing comments”⁷ in which it opposed a waiver of the wind access buffer, apparently for two reasons: (1) it is “important to avoid infringing on the wind rights of the non-participants”; and (2) it “gets to the importance of adequate turbine spacing to minimize wake loss and ensuring efficient generation is occurring at operating wind turbines.”⁸ Apart from these general comments, DOC-EERA did not identify any concerns specifically with respect to either turbine location for which a waiver is requested. Big Bend Wind addresses each of DOC-EERA’s generalized concerns in turn below.

With respect to the first concern identified by DOC-EERA, the wind access buffer setback is a policy that the Commission implemented in 2008. It is not a statute. It is not a rule. Indeed, the

⁵ Sound levels at the residence nearest turbine A01 would comply with state noise standards, and shadow flicker would be less than five minutes per year. There are no residences in the vicinity of turbine A02. *See* Ex. 332 at App’xs D, E, and F (BB-Amended Site Application).

⁶ Ex. 337 at 3 (Ikkala Surrebuttal).

⁷ Although Big Bend Wind’s requested waivers were acknowledged in the Environmental Assessment (“EA”) prepared by DOC-EERA, DOC-EERA did not identify any concerns regarding such waivers in the EA and, as such, Big Bend Wind was unable to address such concerns in testimony or during the public hearing comment period.

⁸ DOC-EERA Public Hearing Comments, at 2.

wind access buffer setback is, in general, unique to Minnesota. DOC-EERA does not explain how a minor departure from a Commission policy here would result in “infringing on wind rights”, and it would not. Rather, granting Big Bend Wind’s request would acknowledge the coordination and diligence with which the Parties approached the resolution of impacts to the Jeffers Site and would incentivize other developers to do the same. In contrast, denying the request could have the effect of disincentivizing developers to reach similar resolutions of broader issues. Further, the record demonstrates that Big Bend Wind has coordinated to ensure that these landowners are aware of the requested wind access buffer setback waiver.⁹

With respect to the second concern identified by DOC-EERA, Big Bend Wind is an affiliate of Apex Clean Energy Holdings, LLC (“Apex”), a highly experienced renewable energy developer which has developed wind projects across the United States. Big Bend Wind and Apex do not share DOC-EERA’s concerns about “adequate turbine spacing” in this instance. There is no issue with internal spacing of the proposed turbines, and, to Big Bend Wind’s knowledge, there are no turbines proposed on these parcels by the existing landowners, and it is highly unlikely a turbine would be proposed in the future given the size and location of these parcels. In fact, there is nothing in this record to indicate that Wind Project, as proposed by Big Bend Wind, will be inefficient; indeed, the turbines are sited to minimize the levelized cost of energy of the Wind Project, which considers both turbine performance and cost of roads, collection lines, and the like. Further, as noted previously, the wind access buffer setback is, in the Applicants’ experience, largely unique to Minnesota, and it is certainly not the case that wind projects in other jurisdictions are operating inefficiently without said buffer.

⁹ Ex. 337 at 2-3 (Ikkala Surrebuttal).

Finally, acknowledging that the Commission has granted waivers from the wind access buffer setback in repowering projects, DOC-EERA notes that the Wind Project is not a repowering project. There is no dispute that is true. However, as discussed above, practical and policy reasons also warrant granting a waiver here.

II. Transmission Line Route.

A. Update concerning interconnection request.

As indicated in Mr. Ikkala's Surrebuttal Testimony, at the time of the public hearing, Big Bend Wind was still awaiting results from the "Definitive Planning Phase" (or, "DPP") Phase 2 report from MISO concerning the Projects' interconnection requests. The Applicants have since received the results of the DPP Phase 2 report and, as a result of significant interconnection costs, determined to withdraw the interconnection requests for the Crandall Switching Station from that queue. However, the Applicants have undertaken additional analysis concerning the point of interconnection and related interconnection request, and, as a result of that analysis, plan to re-submit an interconnection request for the Projects for Crandall Switching Station this fall. Applicants anticipate that the Projects would be in-service as early as 2024.

B. Requested route.

Because the Applicants will continue to seek a point of interconnection at the Crandall Switching Station, Big Bend Wind continues to request that the Commission issue a route permit for the Proposed Route, as identified in the Route Permit Application. Given the Commission's practice to identify an "anticipated alignment" in its Route Permit decisions, Big Bend Wind developed what it believed to be the likely alignment within the Proposed Route that minimizes the overall potential impacts based on the routing factors identified in Minn. Stat. § 216E.03, subd. 7(b), and Minn. R. 7850.4100. The Route Permit Application referred to this alignment as the "Application Alignment." This Application Alignment may require modifications after a Route

Permit is issued due to limitations inherent in identifying an alignment absent detailed survey and engineering work, site review, and design.

After the Commission issues a Route Permit decision with an “anticipated alignment,” a final alignment will be developed by reviewing that “anticipated alignment” with individual landowners and agencies with permitting responsibilities and performing detailed survey and engineering work, site review, and design. The final alignment will be provided to the Commission through the Plan and Profile submission and review process. As part of that submission, Big Bend Wind will inform the Commission as to where deviations in the final alignment from the “anticipated alignment” occur.

In summary, as set forth in the EA, the applicable routing factors are similar across all routing alternatives in this record.¹⁰ These factors, together with the fact that the Proposed Route terminates at Big Bend Wind’s identified point of interconnection and is a route for which Big Bend Wind has acquired, voluntarily, all needed land rights, support the selection of the Proposed Route for the Transmission Line.

III. Permit Conditions.

A. Response to Minnesota Department of Natural Resources Comments.

On February 22, 2022, the Minnesota Department of Natural Resources (“MDNR”) submitted comments concerning the Projects. Applicants provide the following responses to the MDNR comments and note that Applicants will continue to coordinate with MDNR in advance of construction of the Projects, as applicable.

¹⁰ Ex. 107 at “Corrections to the Environmental Assessment 2-2-22” (EA); Ex. 337 at 5 (Ikkala Surrebuttal).

Native Prairie Protection Plan (Wind Project). MDNR referred to a potential in-service date of fourth quarter 2022 and encouraged Big Bend Wind to conduct an on-site field assessment of areas identified as potential native prairie habitat as early in the 2022 field season as practicable. The anticipated in-service date for the Projects is no longer 2022. Nonetheless, Big Bend Wind affirms that field assessments will occur during a time of year where, as recommended by MDNR, “the presence of prairie indicator species can be accurately assessed,” and Big Bend Wind will provide the Native Prairie Protection Plan to MDNR for review upon its completion.¹¹

Calcareous Fen Investigation (Wind Project). MDNR noted that it advised Big Bend Wind that areas within 500 feet of proposed construction activities should be reviewed for the presence of calcareous fens. As described in Mr. Ikkala’s Surrebuttal Testimony, Big Bend Wind has agreed to this recommendation.¹²

Henslow’s Sparrow (Wind Project). MDNR recommended that Big Bend Wind coordinate with MDNR regarding the Henslow’s Sparrow. As stated in Mr. Ikkala’s Surrebuttal Testimony, Big Bend Wind has agreed to coordinate with MDNR regarding this issue prior to construction.¹³

Turbine T35 Collector Line (Wind Project). MDNR stated that the collector line between turbines 35 and A03 crosses the South Fork of the Watonwan River, a Reinvest in Minnesota (“RIM”) easement, and a wooded riparian area. MDNR recommended routing this collector line north of the river and stated that any river crossing would require a license from MDNR to cross public waters. Big Bend Wind will revise the collection line to avoid the RIM easement. The collection line is routed on participating property, with landowner input, and generally collocated

¹¹ Ex. 332 at 116-17 (BB-Amended Site Application).

¹² Ex. 337 at 5-6 (Ikkala Surrebuttal).

¹³ Ex. 337 at 6 (Ikkala Surrebuttal).

with 350th Street. Big Bend Wind will obtain MDNR utility crossing licenses for crossing beneath the South Fork of the Watonwan River. Big Bend Wind does not have land rights for the MDNR recommended collection line path.

Vegetation Management Plan (Solar Project). MDNR recommends that Red Rock Solar revise the Solar Project Vegetation Management Plan (“VMP”) based on the *Guidance for Developing a Vegetation Establishment and Management Plan for Solar Facilities*. As stated in Mr. Ikkala’s Surrebuttal Testimony, Red Rock Solar has prepared a comprehensive and detailed VMP for the Solar Project, the VMP and Solar Site Permit Application explain the benefits of the seed mixes proposed by Red Rock Solar for the Project. MDNR does not identify any deficiencies in the VMP or the seed mixes proposed by Red Rock Solar for the Solar Project. As such, it is unclear what, if any, specific revisions MDNR recommends.¹⁴ Red Rock Solar will coordinate additional changes, if any, to the VMP with MDNR prior to construction.

Route Alternatives (Transmission Line). MDNR stated that all route alternatives in the record could be acceptable with appropriate mitigation. With respect to the Proposed Route, MDNR discussed the red, yellow, and purple alternate route segments, each of which is included in the route width requested by Big Bend Wind. MDNR recommended that construction and pole structure placement avoid impacts to Cedar 2-3, to which Big Bend Wind has agreed. MDNR also recommended that construction and pole placement along the Cottonwood/Watonwan County border avoid impacts to an existing conservation easement west of that border. Big Bend Wind will make a minor shift to the Application Alignment and associated right-of-way to avoid this conservation easement.

¹⁴ Ex. 337 at 6-7 (Ikkala Surrebuttal).

Avian Flight Diverters (Transmission Line). MDNR stated that it supports the condition in Section 5.3.15 of the sample route permit regarding bird flight diverters. Big Bend Wind also does not oppose this condition.¹⁵

B. Independent Agency Monitor.

In the EA, DOC-EERA discussed potential permit conditions regarding the use of independent agency monitors for construction of the Projects. As the Applicants have stated, they do not oppose such a condition being included in the Wind Site Permit, Route Permit, and Solar Site Permit, and the accompanying Proposed Findings of Fact and Conclusions of Law incorporate such conditions.

C. Tree Removal Timetable.

In the EA, DOC-EERA proposed including a condition related to tree clearing that would prohibit tree clearing from April 1 - September 30. However, this specific condition is not supported by the record. Rather, as explained in Mr. Ikkala's Surrebuttal Testimony, the timeframe identified by DOC-EERA is not consistent with current guidance from USFWS or recent Commission permits, which instead provide that "tree clearing shall occur between August 1 and May 31." DOC-EERA did not identify a reason for departing from USFWS guidance and recent Commission permits. Accordingly, to the extent a tree removal timetable condition is included in any permit, Applicants respectfully request that the timeframe identified by Applicants be included.¹⁶

¹⁵ Ex. 337 at 6 (Ikkala Surrebuttal).

¹⁶ Ex. 337 at 5 (Ikkala Surrebuttal).

IV. Response to Post-Hearing Public Comments.

After the close of the public hearing comment period, Commission staff filed various comments received by members of the public.¹⁷ Some of the comments concerned topics which have already been addressed in this record, such as environmental issues, the reliability of renewable energy, noise analysis, signal disruption, and property values, and Applicants do not re-address those topics here.¹⁸ There were, however, specific comments to which Applicants would like to respond:

- Brad and Lois Herrig submitted a comment expressing concerns about the Transmission Line and questioned why transmission structures could not be placed farther from view. Big Bend Wind has since reached out to Mr. Herrig and agreed to a pole exclusion zone across the street from the Herrig residence such that the Herrigs will not see transmission line poles leaving their driveway.
- Among other things, Brad Hutchinson stated that the Applicants “abused their power by threatening neighbors.” Applicants and Apex take their relationships with local communities and residents very seriously and have spent years developing good relationships in the vicinity of the Projects with landowners, residents, and other stakeholders. There is no evidence in this record that Applicants have ever behaved as Mr. Hutchinson suggests. Mr. Hutchinson’s comments also included a number of other issues which have already been addressed in this record.
- Davis Harder submitted comments expressing support for local conservation efforts and concerns about the Projects, particularly the Transmission Line, with respect to such efforts. Mr. Harder expressed similar comments during the virtual public hearing and, in response, an Apex representative reached out to Mr. Harder to provide more information about the Projects, a conservation grant, and to discuss Mr. Harder’s concerns.¹⁹ Applicants note that the EA and other information in the record address the Projects’ impacts—or lack thereof—on conservation easements, and the EA specifically addresses the old lakebed identified by Mr. Harder,

¹⁷ Ex. 108 (Public Comments).

¹⁸ See Exs. 107 (EA), 329 (Reply Comments – Scoping).

¹⁹ Public Comment – Davis Harder (April 30, 2021) (eDocket No. 20222-182545-05) and Feb. 2, 2022, 6:00 p.m. Pub. Hrg. Tr. at 46-50.

which is currently in active agricultural production.²⁰ Mr. Harder's comments also pose questions about the impact of the Projects on future conservation easements; Applicants note that they have obtained voluntary easements from landowners who wish to participate in these renewable energy projects, and that no participating landowners have expressed any concerns about conservation easements.

- Kent Scholl submitted comments concerning an alternate route for the Transmission Line that was identified in the Route Permit Application and studied in the EA. The route discussed by Mr. Scholl is not the route for which Big Bend Wind is currently seeking a route permit. Mr. Scholl posed questions regarding lack of communication with landowners along that alternate route. As a representative from Big Bend Wind explained at the public hearing, however, Big Bend Wind is currently precluded from communicating with landowners along that alternate route because many of the parcels are under easement with another renewable energy developer which has, to date, not given Big Bend Wind permission to approach those landowners.²¹ Big Bend Wind agrees with Mr. Scholl's assessment that the company is not currently seeking a route permit for the alternate route.

CONCLUSION

Big Bend Wind and Red Rock Solar respectfully request that the Administrative Law Judge recommend, and the Commission approve, the Applications and issue the approvals with the conditions identified in the accompanying Proposed Findings of Fact and Conclusions of Law.

²⁰ Ex. 107 at 38-39 (EA).

²¹ Ex. 108 at 6-7 (Public Comments) and Feb. 2, 2022, 6:00 p.m. Pub. Hrg. Tr. at 25.

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