

May 12, 2022

Ms. Sarah Beimers
Environmental Review Program Manager
State Historic Preservation Office
Minnesota Department of Administration
50 Sherburne Avenue, Suite 203
Saint Paul, Minnesota 55155

Via Electronic Filing

RE: The Proposed Big Bend Wind Project, Dockets 19-408, 19-619, and 19-621

Dear Ms. Beimers,

I write on behalf of the Minnesota Public Utilities Commission ("Commission") to consult with the State Historic Preservation Office ("SHPO") regarding the Big Bend Wind Project in the area of the Jeffers Petroglyphs, as required under Minn. Stat. § 138.665.

As a preliminary matter, I note that the Commission sits in a quasi-judicial capacity and must make siting and routing decisions based solely on the administrative record developed and submitted by the parties and participants to Commission proceedings. The Commission is also subject to Minnesota's Open Meeting Law, Minn. Stat. Ch. 13D, which requires that Commission meetings be open to the public and the record be publicly available. Accordingly, the Commission's consultation with SHPO must comply with these laws.

Project Summary and Procedural Posture

We understand that the SHPO has some familiarity already with the Big Bend Project, having attended several meetings with Big Bend Wind, LLC ("Big Bend") regarding the Phase1a literature review and cultural/archaeological survey work. However, to summarize: Big Bend, an affiliate of Apex Clean Energy Holdings, LLC ("Apex"), is proposing the Big Bend Wind Project ("Big Bend Project"). The Big Bend Project involves a Certificate of Need (MPUC Docket No. 19-408), a Site Permit (MPUC Docket No. 19-619) for a 300-megawatt large wind energy conversion system ("LWECS"), and a Route Permit (MPUC Docket No. 19-621) for a 161-kilovolt (kV) transmission line ("Transmission Line").¹ Although the project consists of these three dockets (certificate of need, site permit for the wind farm, and route permit for

¹ The certificate of need and site permit applications for the Red Rock Solar Project (MPUC Docket Nos. 19-486 and 19-620), which is a separate but related part of the facility, are being reviewed contemporaneously with the Big Bend Project.

the transmission line), they are considered together by the Commission because they are interdependent.

The project is in Cottonwood, Watonwan, and Martin Counties, Minnesota. As you know the project is in the area of the Jeffers Petroglyphs, a historic location within Minnesota's statutorily defined Historic Site Network and is listed in the National Register of Historic Places.

On March 11, 2021, the Commission referred this matter to the Office of Administrative Hearings ("OAH") for assignment of an administrative law judge (ALJ) to conduct public and contested cases hearings, which included the issue of the potential impact of the wind project on the Jeffers Petroglyphs site. The ALJ was charged with preparing a report containing findings of fact, conclusions of law, and a recommendation on the merits of the proposed projects ("ALJ Report").

While proceedings in front of OAH were ongoing, Big Bend, Red Rock Solar, LLC ("Red Rock Solar"), Apex, the Minnesota Historical Society ("MNHS"), Lower Sioux Indian Community in the State of Minnesota ("Lower Sioux"), and Upper Sioux Community ("Upper Sioux") reached a proposed settlement agreement. As part of the settlement, Big Bend agreed to modify the proposed wind turbine layout to remove eight wind turbines and relocate them at least seven miles from the Jeffers Petroglyphs site, as well as agreeing to not construct certain other turbines contingent on Commission authorization of alternative turbine locations. The parties filed testimony into the administrative record supporting the Settlement Agreement.

The ALJ Report was issued on April 29, 2022. Although the ALJ Report is only a recommendation and not binding on the Commission, the ALJ recommended that the Commission grant the Big Bend Project a Certificate of Need, Site Permit, and Route Permit. At this time, parties, may submit exceptions to the ALJ report, with such filings required to be filed by May 16, 2022. Ultimately, the Commission will consider the ALJ's Report, any exceptions, and whether to issue the requested permits, at an upcoming agenda meeting. SHPO is on the service list for the applicable dockets and will continue to receive notice of any upcoming hearings.

Relevant Documents Attached

While we encourage you to review as much of the record as you find relevant, to assist you in your continued review of the Big Bend Project and to facilitate our consultation, I am attaching the following documents from the administrative record:²

- (1) Amended Site Permit Application
- (2) ALJ Report
- (3) Executed Settlement Agreement
- (4) Settlement Agreement, Ex. A – Site Map

² The administrative record can also be publicly accessed at: www.edockets.state.mn.us

- (5) Settlement Agreement, Ex. B – Visual Simulations
- (6) Settlement Agreement, Ex. C – Unanticipated Discoveries Plan
- (7) Testimony Supporting Settlement Agreement: (a) Direct Testimony of Robert L. Larsen on behalf of Lower Sioux; (b) Direct Testimony of Adam Savariego, the duly elected Tribal Secretary of the Upper Sioux Community; and (c) Direct Testimony of Kevin Maijala, on behalf of MNHS.

The Jeffers Site, and the cultural and archaeological resources associated with it, as well as the discussions between the parties leading to settlement, are discussed on pages 58-60 of the ALJ Report. A summary of public comments is contained on pages 22-34 of the ALJ Report. Section 8.7 of the Amended Site Permit discusses cultural and archaeological resources, including a detailed history of Big Bend's consultation with interested stakeholders.

Procedure for Further Consultation with the Commission

Given that the Commission may only consider information contained in the administrative record, we ask that SHPO file any comments or concerns with the settlement or issuance of the permits into the administrative record. If you are unable to file comments, you can provide your written comments directly to me, and I will upload them into the record on your behalf. My understanding is that your Office typically requires 30 to 60 days to complete review of a project and issue written comments. If your review will not be completed within the typical review period, please let us know immediately. We would also welcome your participation at the upcoming (though not yet scheduled) agenda meeting at which the Commission will consider whether to approve the settlement and/or issue the permits. Finally, we encourage you to continue to work with DOC-EERA and Big Bend directly to address any concerns you may have, prior to the Commission's consideration of this matter.

We appreciate the important role SHPO plays in protecting Minnesota's historic properties, and we look forward to your review and comment on the proposed project in furtherance of our consultation. We also welcome a separate discussion regarding how we can best facilitate SHPO participation in future Commission dockets to meet our consultation obligation. If you need additional information to complete your review, or have procedural questions about this consultation, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Seuffert", with a long horizontal flourish extending to the right.

Will Seuffert,
Executive Secretary