

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange
Dan Lipschultz
Matthew Schuerger
Katie J. Sieben
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Palmer’s
Creek Wind Farm, LLC for a Large Wind
Energy Conversion System Site Permit for the
44.6 MW Palmer’s Creek Wind Project in
Chippewa County

ISSUE DATE: June 16, 2017

DOCKET NO. IP-6979/WS-17-265

ORDER FINDING APPLICATION
COMPLETE, REFERRING
APPLICATION TO THE OFFICE OF
ADMINISTRATIVE HEARINGS, AND
VARYING TIME FRAMES

PROCEDURAL HISTORY

On April 11, 2017, Palmer’s Creek Wind Farm, LLC (Palmer or Applicant) filed a site-permit application for a 44.6-megawatt wind project in Chippewa County (the Project).

On May 8, the Department of Commerce’s Energy Environmental Review and Analysis staff (EERA) filed comments on the completeness of the application.

On June 1, 2017, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

Under Minn. Stat. § 216F.04 and Minn. R. 7854.0300, a person wishing to build a Large Wind Energy Conversion System (LWECS) must apply to the Commission for a site permit.¹ Because Palmer’s Project qualifies as an LWECS, Palmer is required to file a site permit application.

II. Application Completeness

The EERA reviewed the site-permit application for completeness under Minn. R. ch. 7854 and concluded that the application included the information required by Minn. R. 7854.0500.

¹ Minn. Stat. § 216F.01, subd. 2, defines an LWECS as any combination of wind energy conversion systems with a combined nameplate capacity of 5,000 kilowatts or more.

However, the EERA noted that archeological surveys were not complete when the application was filed and recommended that Palmer supplement its application with the survey results before the Commission issues a draft site permit.

On May 11, 2017, Palmer filed updated survey results as recommended by the Department.

The Commission concurs with the EERA that Palmer's site-permit application is substantially complete. The application includes the information contemplated by Minn. R. 7854.0500, including applicant information, a description of the project and the proposed site, potential environmental impacts, a construction schedule, and decommissioning plans. The Commission will accept the application as substantially complete, with the conditions discussed below.

III. Referral to the Office of Administrative Hearings

While no person has identified disputed issues of material fact or recommended that the case be referred to the Office of Administrative Hearings for contested-case proceedings, the Commission finds that it cannot resolve all issues raised by the application on the basis of the record before it. Those issues turn on specific facts that are best developed in proceedings conducted by an administrative law judge.

To facilitate factual development of the record, the Commission will refer the matter to the Office of Administrative Hearings, requesting that the assigned administrative law judge:

- Conduct a public hearing in accordance with Minn. R. 7850.3800, subp. 2 to 4, and as the administrative judge determines appropriate, Minn. R. 1405.0500, .0600, .0800, .1900, .2200.
- Direct that intervention as a party is not required. Parties to the proceeding are the Department of Commerce and the Applicant. Other persons may participate as public participants or as otherwise prescribed.
- Direct that state agencies participate in accordance with Minn. Stat. § 216E.10, subd. 3.
- Establish the types of filings necessary to facilitate proper record development (e.g., testimony, briefs, reply briefs, proposed findings and site-permit recommendations) and a schedule for submitting those filings through the scheduling of a prehearing conference in accordance with Minn. R. 1405.1100, as determined appropriate.
- Emphasize the statutory time frame for the Commission to make final decisions on the application and encourage the applicant and others to adhere to a schedule that conforms to the statutory time frame.
- Ask the Applicant and others to address whether the proposed LWECS project meets the criteria established under Minn. Stat. ch. 216F and Minn. R. ch. 7854.
- Prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the LWECS site-permit application, and provide recommendations, if any, on conditions and provisions of the proposed site permit.

- Direct that the hearing record be maintained through the Commission’s electronic e-Dockets filing system.

Finally, to further facilitate the permit-review process, the Commission will take the following steps:

- Request that the Department continue to study the issues and indicate during the hearing process, through testimony or comment, its position on the reasonableness of granting a site permit.
- Request that the Department conduct a public information meeting to collect information from the public and others to prepare a draft site permit for the Commission’s consideration.
- Require the Applicant to facilitate in every reasonable way the continued examination of the issues requested by the Department and Commission staff.
- Require the Applicant to place a print or electronic copy of the site-permit application in the government center or public library located closest to the proposed project site.
- Direct that the Applicant work with Commission staff and the administrative law judge to arrange for publication of the notice of hearing in newspapers of general circulation at least ten days prior to the hearing, that such notice be in the form of visible display ads, and that proof of publication be obtained from the newspapers selected.
- Direct that all notice requirements in these matters provided for under Minn. Stat. ch. 216F and Minn. R. ch. 7854 include delivery to all affected landowners. An affected landowner is any landowner or designee that is within or adjacent to the proposed LWECS site boundary.
- Delegate its administrative authority in this matter, including authority over scheduling, to the Commission’s Executive Secretary.

IV. Rule Variances

Under Minn. R. 7829.3200, the Commission is authorized to vary any of its rules upon making the following findings:

- (1) Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (2) Granting the variance would not adversely affect the public interest; and
- (3) Granting the variance would not conflict with standards imposed by law.

Under Minn. R. 7854.0600, subp. 1, the Commission must accept, conditionally accept, or reject an LWECS site-permit application within 30 days of receipt of the application. In addition, under Minn. R. 7854.0800, subp. 1, the Commission must make a preliminary determination on whether to issue a site permit within 45 days of accepting an application.

To ensure sufficient time for public input, Department analysis, and Commission decision-making, the Commission will vary the timelines in Minn. R. 7854.0600 and .0800, making the following findings:

- (1) Enforcing the timelines in Minn. R. 7854.0600 and .0800 would impose an excessive burden upon the public, upon the Department and other parties to the proceeding, and upon the Commission by jeopardizing the thoroughness of the Commission's decision-making process.
- (2) Varying the timelines would not adversely affect the public interest and would in fact serve the public interest by protecting the Commission's decision-making process.
- (3) Varying the timelines would not conflict with any standards imposed by law.

Accordingly, the Commission will vary Minn. R. 7854.0600, subp. 1, to extend the 30-day time frame for Commission decision on application completeness, and Minn. R. 7854.0600, subp. 1, to allow additional time for the Commission to make a preliminary determination as to whether a permit should be issued or denied.

V. Public Advisor

Upon acceptance of an application for a site permit, the Commission is to designate a staff person to act as the public advisor on the project under Minn. R. 7854.0700. The public advisor is available to answer questions from the public about the permitting process. In this role, the public advisor may not act as an advocate on behalf of any person.

The Commission will designate Kevin George as the public advisor. His contact information is as follows: Kevin George, Public Advisor, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, Saint Paul, Minnesota 55101-2147. He can be reached by telephone at 651-201-2251 and by email at publicadvisor.puc@state.mn.us.

ORDER

1. The Commission accepts the site-permit application of Palmer's Creek Wind Farm, LLC as substantially complete.
2. The Commission refers the matter to the Office of Administrative Hearings, requesting that the assigned administrative law judge adopt the procedural framework set forth in part III of this order.
3. The Applicant shall facilitate in every reasonable way the continued examination of the issues requested by the Department and Commission staff.

4. The Applicant shall place a print or electronic copy of the site permit application in the government center or public library located closest to the proposed project site.
5. The Applicant shall work with Commission staff and the administrative law judge to arrange for publication of the notice of hearing in newspapers of general circulation at least ten days prior to the hearing; such notice shall be in the form of visible display ads, and proof of publication shall be obtained from the newspapers selected.
6. All notice requirements in these matters provided for under Minn. Stat. ch. 216F and Minn. R. ch. 7854 shall include delivery to all affected landowners.
7. The Commission varies Minn. R. 7854.0600, subp. 1, to extend the 30-day time frame for Commission decision on application completeness.
8. The Commission varies Minn. R. 7854.0800, subp. 1, to extend the 45-day time frame for Commission decision on the issuance of a draft site permit.
9. The Commission delegates its administrative authority in this case, including authority over scheduling, to the Executive Secretary.
10. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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