

November 22, 2017

Via Electronic Filing

Mr. Daniel Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

Re: *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, Minnesota. Docket No. IP-6979/WS-17-265, OAH 82-2500-34501*

Exceptions of Palmer's Creek Wind Farm, LLC

Dear Mr. Wolf:

Pursuant to Minn. R. 7829.2700 and the Honorable Barbara Case's July 24, 2017 Scheduling Order issued in the above-referenced proceedings, Palmer's Creek Wind Farm, LLC ("Palmer's Creek") respectfully submits the following Exceptions to Judge Case's November 8, 2017 Summary of Public Testimony, Findings of Fact, Conclusions of Law and Recommendation ("Report"). As discussed below, while Palmer's Creek greatly appreciates Judge Case's efforts and agrees with the vast majority of the Report, it respectfully takes exception to one discrete recommendation.

In particular, Palmer's Creek disagrees with Judge Case's recommendation that Project turbines WTG-5, WTG-9, WTG-10 and WTG 12 be relocated or removed as a condition for granting a Site Permit. Based upon Palmer's Creek's discussions with Department of Natural Resources ("DNR") and the Department of Commerce, Energy Environmental Review and Analysis ("Department"), Palmer's Creek believes that such a condition is unnecessary and alternative mitigation and monitoring (if necessary) can be developed in the context of the Avian Bat Protection Plan ("ABPP"). Finally, Palmer's Creek suggests minor clarifications to the Report as outlined below.

A. TURBINES RELOCATION/REMOVAL

In her Report, Judge Case finds that the DNR "continues to recommend locating turbines WTG-5, WTG-9, WTG-10 and WTG 12 200 to 300 feet farther away from the river valley" based on DNR's assessment that the Project site poses a high risk to avian and bat population.¹ Judge

¹ Report at Finding 249.

Case, therefore, finds that “[t]he project will be consistent with environmental preservation, sustainable development, and the efficient use of resources only if turbines 5, 9, 10 and 12 are relocated, removed from the Project, or if MNDNR’s assessment and related concerns are otherwise adequately addressed.”² Consistent with these Findings, Judge Case ultimately recommends that the Commission issue a Site Permit subject to the condition that the Project relocate or remove turbines WTG-5, WTG-9, WTG-10 and WTG 12.³

As Judge Case noted in her Report, Palmer’s Creek disagrees with DNR’s recommendation that it move the four turbines as Palmer’s Creek previously moved turbine locations to address concerns with impacts on avian and bat habitat to address DNR concerns. Due to constraints (*e.g.*, turbine spacing requirements, setback requirements, etc.), Palmer’s Creek is unable to relocate these four turbines an additional 200 to 300 feet farther away from the Minnesota River Valley. More importantly, however, Palmer’s Creek continues to work with DNR and the Department on this issue and understands that both DNR and the Department believe that alternative mitigation, including monitoring, could address the stated concerns without turbine relocation or removal. This understanding is consistent with the Department’s recommended approach as summarized in Finding 77:

The DOC-EERA recommended a final version of the ABPP be submitted two weeks prior to the Commission’s final decision on the issuance of a site permit. The DOC-EERA noted that Applicant will likely not be able to move the turbines as requested by MNDNR due to various siting constraints. The DOC-EERA recommended that Applicant clearly explain the restrictive siting factors in the revised ABPP, which apply to the turbines MNDNR has requested be moved further from the Minnesota River Valley.

In addition, it is important to note that DNR did not conclude or recommend that the relocation or removal of the subject turbines should be a condition of the Site Permit. Instead, DNR noted that it will “consider reducing” the designated risk level of the Project site “only if WTG 5, 9, 10 and 12 are located farther from the Minnesota River, are located to another location, or are removed from the project.”⁴ This position is accurately reflected in Finding of Fact 62, which also notes that “MNDNR commented that the ABPP needs to include detailed bat monitoring protocols for high-risk sites. Based on the current layout, the ABPP needs to specify that WTGs 1, 2, **5, 9, 10, and 12** are included in the monitoring.” (Emphasis added.)

Accordingly, Palmer’s Creek respectfully requests that the Commission not require Palmer’s Creek to relocate or remove the subject turbines as a Site Permit condition. Instead, Palmer’s Creek should be permitted to continuing working with the Department and DNR on alternative mitigation and monitoring (if necessary) in the context of the ABPP, which will be submitted prior to the

² *Id.* at Finding 256.

³ *Id.* at Conclusions 8-10.

⁴ *See* DNR’s August 8, 2017 Comments at ¶ 7.

issuance of a Site Permit. Accordingly, Palmer's Creek requests that the Commission accept the Judge's Report with the following revisions to the proposed Findings and Conclusions of Law:

Findings:

256. Due to the Project's proximity to avian and bat habitat associated with the Minnesota River Valley, and considering MNDNR's high-risk designation of the Project, the inaccuracies and lack of information provided in the Applicant's Avian surveys, ~~and MNDNR's continuing position that turbines 5, 9, 10 and 12 should be relocated to protect avian and bat populations.~~ ~~T~~he project will be consistent with environmental preservation, sustainable development, and the efficient use of resources ~~only if turbines 5, 9, 10 and 12 are relocated, removed from the Project, or if MNDNR's assessment and related concerns are otherwise adequately addressed~~ in the context of the ABPP development and implementation.

Conclusions:

8. The Project, with the Draft Site Permit conditions revised as set forth above ~~and relocation or removal of turbines WTG-5, WTG-9, WTG-10 and WTG-12~~, satisfies the site permit criteria for a LWECS contained in Minn. Stat. § 216F.03 and meets all other applicable legal requirements.

9. The Project, with the permit conditions discussed above ~~and relocation or removal of turbines WTG-5, WTG-9, WTG-10 and WTG-12~~, is compatible with environmental preservation, sustainable development, and the efficient use of resources.

10. The Project, with the permit conditions discussed ~~above and relocation or removal of turbines WTG-5, WTG-9, WTG-10 and WTG-12~~, does not present a potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act.

B. CLARIFICATIONS

Palmer's Creek appreciates the efforts of Judge Case in preparing the comprehensive Report and offers the following minor clarifications/revisions to ensure an accurate record:

Introduction

Mike Rutledge, head of the Fagen Engineering, LLC, Environmental Services Department; Todd Hay, head of the Fagen Engineering, LLC, Civil ~~Engineering~~ Department; and Kate Carlton, Fagen Inc., Engineering Corporate Counsel, appeared at the public hearing on behalf of Palmer's Creek Wind Farm, LLC L.L.C. (Applicant).

This change clarifies the corporate names of the various entities mentioned.

Findings

3. The four Fagen family members and affiliated entities own~~Fagen, Inc.~~ developed the Big Blue Wind Farm, which is currently operating in Faribault County, Minnesota.

This change is intended to reflect the fact that entities owned by the Fagen family members took over ownership of the Big Blue Wind Farm after the developer, Exergy Development Group of Idaho, L.L.C., defaulted on construction and debt-financing of the project. This change was reflected in a November 6, 2012 informational filing notifying the Commission of a change in the upstream ownership of Big Blue Wind Farm, LLC in Docket No. IP-6685/WS-10-1238.

Palmer's Creek appreciates the opportunity to file these brief Exceptions. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

/s/ **Brian Meloy**

Brian Meloy

