

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application of Nobles 2 Power Partners, LLC for a Site Permit for the up to 260 MW Nobles 2 Wind Project and Associated Facilities in Nobles County, Minnesota

ISSUE DATE: January 4, 2018

DOCKET NO. IP-6964/WS-17-597

ORDER ACCEPTING APPLICATION, ESTABLISHING PROCEDURAL FRAMEWORK, AND VARYING RULES

PROCEDURAL HISTORY

On October 13, 2017, Nobles 2 Power Partners, LLC (Nobles 2 or the Applicant) filed an application for a large wind energy conversion system (LWECS) site permit (the Application) for an up to 260 megawatt (MW) wind project and associated facilities (the Project). Nobles 2 also filed a certificate-of-need application for the Project.¹

On October 26, 2017, the Commission issued a notice requesting comment on whether the Application is complete under the rules, whether there are contested issues of fact in the Application, and whether the Application should be referred to the Office of Administrative Hearings for a contested-case proceeding.

On November 16, 2017, the Department of Commerce, Energy Environmental Review and Analysis (EERA) filed comments recommending that the Commission accept the Application as complete, determine whether information in the Application was properly designated as trade secret, delay the decision regarding contested-case proceedings, process the Application and the certificate of need application jointly, and issue a variance to Minn. R. 7854.0800.

On November 27, 2017, Nobles 2 filed reply comments concurring with EERA's recommendations and agreeing to file a revised Application with the previously trade-secret data designated as public.

On December 1, 2017, Nobles 2 filed a revised Application without trade-secret designations.

¹ The Commission accepted the certificate-of-need application as complete in its Order Accepting Application, Directing Use of Informal Review Process, and Varying Timeframes, issued on this date in the certificate-of-need docket: *In the Matter of the Application of Nobles 2 Power Partners, LLC for a Certificate of Need for the up to 260 MW Nobles 2 Wind Project and Associated Facilities in Nobles County, Minnesota*, Docket No. IP-6964/CN-16-289.

On December 14, 2017, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. The Project

Nobles 2 is requesting a site permit for an up to 260 MW wind farm in Nobles County. The Project's footprint would cover approximately 42,550 acres in Bloom, Larkin, Leota, Lismore, Summit Lake, and Wilmot Townships.² In addition to wind turbines, the Project would include an electrical-collection system, access roads, permanent meteorological towers, substation and interconnection facilities, and other infrastructure typical of a wind project. Nobles 2 expects an in-service date of the end of 2019. Nobles 2 has executed a power-purchase agreement (PPA) with Minnesota Power, whereby the utility would purchase up to 250 MW of capacity and energy from the Project.

II. Summary of Commission Action

In this order the Commission finds the Application substantially complete, triggering the next phase of review for the Application.

As part of that next phase, the Commission will take the following actions:

- Request that an administrative law judge conduct the proceeding as set forth herein;
- Establish additional procedural requirements;
- Vary Minn. R. 7854.0600, subp. 1, and Minn. R. 7854.0800, subp. 1, to extend the timelines contained in those rules, and vary Minn. R. 7854.0600, subp. 3, to allow the Applicant to distribute electronic copies of the Application to the requisite recipients;
- Delegate administrative authority, including timing issues, to the Executive Secretary;
- Designate a public advisor.

III. Jurisdiction

Before constructing a LWECS, one must obtain a site permit from the Commission. A wind energy conversion system with a combined nameplate capacity of 5 MW or more is considered a LWECS.³ Because the Project exceeds 5 MW, Nobles 2 must obtain a LWECS site permit from the Commission. Minn. R. Ch. 7854 contains the application requirements and criteria for granting a LWECS site permit.

IV. Application Completeness

EERA reviewed the Application for completeness under Minn. R. 7854.0500 and recommended that the Commission find the Application complete.

² The Application states that the Project would impact approximately 115 acres during construction, or less than 0.5% of the 30,356 acres under lease and easement.

³ Minn. Stat. § 216F.01, subd. 2.

The Commission has reviewed the Application and the parties' comments and agrees with EERA; the Commission will accept the Application as substantially complete.

V. Review Process

A. Request Administrative Law Judge

While no person has identified contested 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. The issues turn on specific facts that are best developed in proceedings conducted by an administrative law judge. The Commission will therefore request that an administrative law judge from the Office of Administrative Hearings conduct summary proceedings under Minn. R. 7850.3800 to facilitate development of the factual record.

The Commission concludes that holding a joint public hearing on the certificate of need and LWECS site permit is feasible, efficient, and in the public interest. Therefore, the Commission has ordered in the certificate-of-need docket that the public hearing for the LWECS site permit application be held jointly with the public hearing for the certificate-of-need application.⁴

The Commission requests that the administrative law judge conduct the proceeding in the manner described below:

- Conduct the public hearing in accordance with Minn. R. 7850.3800, subp. 2–4, and, as the administrative law judge deems appropriate, with Minn. R. 1405.0500, .0600, .0800, .1900, and .2200, and provide a summary of public comments from the public hearing;
- Direct that intervention as a party is not required to participate in the proceeding. The Commission notes that EERA and the Applicant are parties to the proceeding, and other persons may participate as public participants or as otherwise prescribed;
- Request that state agencies participate in the proceeding in accordance with Minn. Stat. § 216E.10, subd. 3;
- Establish the types of filings necessary to facilitate proper record development (i.e. 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 deemed appropriate;
- Emphasize the statutory timeframe 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 timeframe;

⁴ *In the Matter of the Application of Nobles 2 Power Partners, LLC for a Certificate of Need for the up to 260 MW Nobles 2 Wind Project and Associated Facilities in Nobles County, Minnesota*, Docket No. IP-6964/CN-16-289, Order Accepting Application, Directing Use of Informal Review Process, and Varying Timeframes, issued the same date as this order.

- Address and ask others to address whether the 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 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 e-Dockets filing system.

B. Additional Procedural Requirements

To facilitate the review process, the Commission will take the following steps:

- Delegate administrative authority in this proceeding, including timing issues, to the Executive Secretary.
- Request that EERA continue to study the issues and indicate during the hearing process, through testimony or comments, its position on the reasonableness of granting a site permit.
- Require the Applicant to facilitate in every reasonable way the continued examination of the issues requested by EERA and Commission staff.
- Require the Applicant to place a print or electric copy of the Application in the government center or public library located closest to the Project site.
- Require the Applicant to 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.
- Require that all noticing requirements in these matters provided for under Minn. Stat. Ch. 216F and Minn. R. Ch. 7854 shall include delivery to all affected landowners. An affected landowner is any landowner or designee that is within or adjacent to the Project boundary.

VI. Rule Variances

Under Minn. R. 7829.3200, the Commission will 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.

A. Extension of Timelines

Minn. R. 7854.0600, subp. 1, requires the Commission to decide on the completeness of a LWECS site permit application within 30 days of filing.

The Commission concludes that the requirements for a variance to Minn. R. 7854.0600, subp. 1, are met, and makes the following findings:

1. Enforcement of the rule would impose an excessive burden upon the Commission, EERA, and the public, because the timeframe in the rule does not allow enough time to review the Application, solicit comments, schedule a Commission meeting, and prepare a written order;
2. Varying the timeframe serves the public interest by allowing more time for public comment on, and Commission consideration of, the Application;
3. Granting the variance does not conflict with standards imposed by law.

Accordingly, the Commission will vary Minn. R. 7854.0600, subp. 1, to extend the timeline contained in the rule.

Additionally, EERA has requested a variance to Minn. R. 7854.0800, subp. 1, which requires the Commission to make a preliminary determination regarding the issuance or denial of a site permit within 45 days of accepting the application, after which a draft site permit is prepared. EERA requests an extension of the timeline contained in the rule to allow more time for the scheduling of the informal meeting and for public comment on the issues to be considered in the draft site permit.

The Commission concludes that the requirements for a variance to Minn. R. 7854.0800, subp. 1, are met, and makes the following findings:

1. Enforcement of the rule would impose an excessive burden upon the Commission, EERA, and the public, because it would not allow sufficient time to schedule and hold public information meetings, provide for an adequate public comment period, prepare a draft site permit, schedule a Commission meeting, and prepare a written order;
2. Varying the timeframe serves the public interest by allowing more time for public comment on issues to be considered in the draft site permit;
3. Granting the variance does not conflict with standards imposed by law.

Accordingly, the Commission will grant EERA's requested variance to Minn. R. 7854.0800, subp. 1, to extend the timeline contained in the rule.

The Commission will also delegate to the Executive Secretary the authority to establish a new timeline for the Commission's preliminary determination under Minn. R. 7854.0800, subp. 1.

B. Distribution of Application

In addition, Nobles 2 has requested a variance to Minn. R. 7854.0600, subp. 3, which requires a LWECS site permit applicant, upon acceptance of the application by the Commission, to provide copies of the application to the Minnesota Historical Society, each landowner within the boundaries of the project site, the office of each regional development commission of a development region, the auditor of each county, and the clerk of each city and township in which the LWECS is to be located. Nobles 2 requests that the rule be varied to allow it to provide electronic copies of the Application and appendices to the requisite recipients.

The Commission concludes that the requirements for a variance to Minn. R. 7854.0600, subp. 3, are met, and makes the following findings:

1. Enforcement of the rule would impose an excessive burden upon the applicant because it would require printing tens of thousands of pages to distribute hard copies to all requisite recipients of the Application;
2. Granting the variance would not adversely affect the public interest because any requisite recipient can request a hard copy of the Application;
3. Granting the variance does not conflict with standards imposed by law.

Accordingly, the Commission will grant the Applicant's requested variance to allow it to provide hard copies or electronic copies of the Application and maps, and provide appendices via electronic means such as a CD or thumb drive, unless otherwise requested by a recipient.

VII. Public Advisor

Upon acceptance of an application for a site permit, the Commission designates a staff person to act as 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 Charles Bruce as the Public Advisor.⁵ His phone number is 651.201.2251 and his email is publicadvisor.puc@state.mn.us.

ORDER

1. The Commission accepts the Application as substantially complete.
2. The Commission requests that an administrative law judge from the Office of Administrative Hearings preside over the public hearing as described below:
 - a. Conduct the public hearing in accordance with Minn. R. 7850.3800, subp. 2–4,

⁵ At the Commission meeting, the Commission voted to designate Bret Eknes as Public Advisor. The Commission has since filled its dedicated Public Advisor staff position.

and, as the administrative law judge deems appropriate, with Minn. R. 1405.0500, .0600, .0800, .1900, and .2200, and provide a summary of public comments from the public hearing;

- b. Direct that intervention as a party is not required to participate in the proceeding. The Commission notes that EERA and the Applicant are parties to the proceeding, and other persons may participate as public participants or as otherwise prescribed;
 - c. Request that state agencies participate in the proceeding in accordance with Minn. Stat. § 216E.10, subd. 3;
 - d. Establish the types of filings necessary to facilitate proper record development (i.e. 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 deemed appropriate;
 - e. Emphasize the statutory timeframe 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 timeframe;
 - f. Address and ask others to address whether the Project meets the criteria established under Minn. Stat. Ch. 216F and Minn. R. Ch. 7854;
 - g. Prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the Application, and provide recommendations, if any, on conditions and provisions of the proposed site permit;
 - h. Direct that the hearing record be maintained through the Commission's e-Dockets filing system.
- 3. The Commission delegates administrative authority in this proceeding, including timing issues, to the Executive Secretary.
 - 4. The Commission designates Charles Bruce as the Public Advisor to facilitate citizen participation in the review process. His phone number is 651.201.2251 and his email is publicadvisor.puc@state.mn.us.
 - 5. The Commission requests that EERA continue to study the issues and indicate during the hearing process, through testimony or comments, its position on the reasonableness of granting a site permit.
 - 6. The Commission directs the Applicant to comply with all requirements set forth below:
 - a. The Applicant shall facilitate in every reasonable way the continued examination of the issues requested by EERA and Commission staff.

- b. The Applicant shall place a print or electric copy of the Application in the government center or public library located closest to the Project site.
 - c. 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, that such notice be in the form of visible display ads, and that proof of publication be obtained from the newspapers selected.
 - d. All noticing requirements in these matters provided for under Minn. Stat. Ch. 216F and Minn. R. Ch. 7854 shall include delivery to all affected landowners. An affected landowner is any landowner or designee that is within or adjacent to the Project boundary.
7. The Commission varies Minn. R. 7854.0600, subp. 1, and Minn. R. 7854.0800, subp. 1, to extend the timelines contained in those rules.
8. The Commission grants the Applicant's request for a variance to Minn. R. 7854.0600, subp. 3, to allow it to provide hard copies or electronic copies of the Application and maps, and provide appendices via electronic means such as a CD or thumb drive, unless otherwise request by a recipient.
9. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.