BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS AND RECOMMENDATIONS OF THE MINNESOTA DEPARTMENT OF COMMERCE ENERGY FACILITY PERMITTING STAFF

DOCKET NO. IP 6605/WS-06-1445

Meeting Date: February 15, 2007 .....Agenda Item # _____7____

Company: Kenyon Wind, LLC

Docket No. **PUC Docket Number: IP 6605/WS-06-1445**

In the Matter of the Application of Kenyon Wind, LLC for a Large Wind Energy Conversion System Site Permit for a 18.9 Megawatt Wind Farm in Goodhue County

Issue(s): 1) Should the Commission make a preliminary determination on whether a draft site permit may be issued or denied for the proposed Kenyon Wind 18.9 MW LWECS in Goodhue County, Minnesota?
2) If the Commission makes a determination to issue a draft permit, should the Commission authorize the proposed draft site permit presented by DOC EFP staff?

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Relevant Documents

Kenyon Wind, LLC, LWECS Site Permit Application (#1)	December 15, 2006
Kenyon Wind, LLC, Amended LWECS Application (#3)	January 25, 2007

This document can be made available in alternative formats; i.e. large print or audio tape by calling (651) 201-2202 (Voice) or 1-800-627-3529 (TTY relay service).

The enclosed materials are Comments and Recommendations of the Department of Commerce Energy Facility Permitting Staff. They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted.

Document Attached
Attachment A. Proposed draft site permit

(Footnote: see eDockets (06-1445) or the PUC Facilities Permitting website for additional documents http://energyfacilities.puc.state.mn.us/Docket.html?Id=18946)

Statement of the Issue

Should the Commission make a preliminary determination to issue or deny a draft site permit? Should the Commission approve and authorize the proposed draft site permit?

Introduction and Background

The Applicant and the Project
The Applicant is a Minnesota-based Limited Liability Company. Kenyon Wind does not own nor have financial interests in any other LWECS projects in Minnesota.

The Applicant is coordinating development, equity financing, and management of the project with Edison Mission Energy, Inc., a California based, wholly owned subsidiary of Southern California Edison. Edison Mission Energy (Edison) has more than $6 billion in energy assets worldwide and provides financial, development, independent power production, operating and energy trading services across the United States. Edison, its affiliates and subsidiaries are one of the largest financiers, owners and purchasers of wind energy facilities in the United States. Edison has financial and ownership interests in many wind projects in Minnesota.

The Kenyon Wind project is a Community Based Energy Development (CBED) project. Ownership of the Kenyon Wind project will be shared among the 9 Limited Liability Companies which comprise Kenyon Wind, LLC, and Edison and/or its affiliates. The Commission has reviewed and approved the Kenyon Wind power purchase agreement (PPA) with Xcel Energy in docket E-002/M-06-1196.

Regulatory Framework and Background

Site Permit Application and Acceptance
On December 15, 2006, Kenyon Wind, LLC, filed an application for a LWECS site permit with the Commission. The Commission accepted the Application as complete and appointed a public advisor for this project at its meeting on January 11, 2007, and issued its Order on January 17, 2007. On January 25, 2007, the Applicant filed an Amended Application reflecting changes to the project's site boundary and proposed wind turbine layout.

Preliminary Determination and Approval of the Proposed Draft Site Permit
Minnesota Rule 4401.0500 provides the Commission up to 45 days after accepting an LWECS application to make a preliminary determination whether a permit may be issued or denied. As part of this process, the Commission reviews a draft LWECS site permit, which can be modified, rejected or approved by the Commission prior to initiating the public review process.

Issuing a draft site permit does not authorize a person to construct an LWECS. The PUC may change the draft site permit in any respect before final issuance or may deny the site permit at a later date. EFP staff will bring this matter back to the Commission for final action upon the conclusion of the public review process.

Public Participation Process
If the Commission makes a preliminary determination that a permit may be issued, the DOC EFP staff will implement the public participation process found in Minnesota Rule 4401.0550. The public will be notified that a draft site permit has been issued, a public comment period established and public information meeting(s) held near the proposed site. Staff will work with the public and local governmental units to identify issues, impacts and possible mitigation measures prior to bringing this matter back to the Commission for a final permit decision.

Contested Case Hearing
Minnesota Rule 4401.0550, subp. 5, provides the opportunity for any person to request that a contested case hearing be held on the proposed LWECS project. The request must be filed within the time period established for submitting comments on the draft site permit and must include the issues to be addressed in the hearing and the reasons a hearing is required to resolve those issues.

Advisory Task Force
While Minnesota Rules Chapter 4401 do not provide for an advisory task force, the Power Plant Siting Act's "Advisory Task Force" provisions also apply to the Wind Siting Statute. Minnesota Statutes 216F.02 (a). The Commission has the option to appoint an Advisory Task Force in a wind farm siting proceeding. The Power Plant Siting Act reads, in part (Minnesota Statutes 216E.08):

> Subdivision 1. **Advisory task force.** The commission may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section 15.059, subdivision 6 . At the time the task force is appointed, the commission shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the commission in the charge, whichever occurs first.

DOC EFP Staff Analysis and Comments

Preliminary Determination and Approval of the Proposed Draft Site Permit
Based on the information in the Kenyon Wind Application and Amended Application, ongoing communication with the Applicant, and EFP staff experience with wind energy facilities the Kenyon Wind project appears to be a permittable project. The project is proposed in an agricultural area with no apparent conflicting or competing uses present. The project appears to be able to meet the standard permit conditions of PUC issued wind energy site permits.

DOC EFP staff concludes that a permit could be issued in this case. Attached is a draft site permit for the Commission's consideration. The proposed draft permit prepared by DOC EFP staff is very similar to other LWECS site permits approved by the PUC in recent years.

Public Participation Process
The public participation process in Minnesota Rule 4401.0550 provides notice to the public in the vicinity of the proposed project, requires a public information meeting be held near the site, and allows for public comment and input via a public comment period.

The Commission, DOC EFP staff, local and state governmental agencies and the public will have the opportunity to fully analyze the proposed project, the proposed site, and the draft site permit during the public participation process. The public participation and comment period will allow the record to be fully developed, will identify impacts and mitigation measures, and will allow appropriate conditions be considered in a final site permit.

Contested Case Hearing
To date, no written (or verbal) requests for a contested case hearing have been received by DOC EFP staff. The deadline for requesting a contested case hearing coincides with the deadline for written comments following the public information meeting. The earliest possible comment period deadline in this docket would be March 28, 2006.

A contested case hearing has never been requested for a wind siting project in Minnesota; siting issues have been resolved through the permitting process. If a contested case hearing is requested, staff will bring this docket back to the Commission, pursuant to Minnesota Rule 4401.0550, subp. 5, to determine if material issues of fact have been raised and if holding a hearing would aid the Commission in making a final decision on the permit application.

Advisory Task Force
An advisory task force has never been requested or appointed for a wind siting proceeding. An advisory task force in power plant siting and transmission line routing cases generally assists in identifying issues and alternative sites or routes for analysis in the environmental documents for the project and expires when the scope of the EA or EIS is finalized.

However, since no separate environmental document is prepared in wind siting proceeding, the role of a task force is less clear. Project impacts are addressed in the draft site permit and the public is provided with the opportunity to review and comment on it to identify the issues, impacts and mitigation measures that should be addressed in the final permit.

Consistent with recent transmission line routing cases, DOC EFP has analyzed the merit of establishing an Advisory Task Force for the project. Staff considered four project characteristics: size, complexity, known or anticipated controversy and sensitive resources.

Project Size. The Kenyon Wind project is relatively small at 18.9 MW in size and utilizes a more compact site when compared to previously permitted projects in Minnesota. While the project will be the first utility scale project in Goodhue County, there are other utility scale wind energy projects within 20 to 25 miles at Dodge Center, at Carleton College and at St. Olaf College in Northfield.

Complexity. The Kenyon Wind site is located on intensively managed agricultural lands outside the town of Kenyon. The project site does not appear to have complex conditions such as competing or conflicting land uses.

Known/Anticipated Controversy. Nearby residents or landowners may be concerned about the siting and impacts of this project. Staff anticipate that members of the public and local governmental units will raise questions and concerns about a wind project being sited nearby homes and farms.

Sensitive Resources. EFP staff is not aware of sensitive natural recourses such as protected lands, native prairie, endangered species, nor cultural or historic resources within the proposed Kenyon Wind site. There are several homes and farms within or near the site, which is typical in siting cases.

Based on the analysis above, the DOC EFP staff concludes that an advisory task force is not warranted in this case and that the wind permitting process provides adequate opportunities for the public to identify issues, impacts and mitigation measures to be addressed in a final site permit.

Commission Decision Options

A. Preliminary determination and approval of the proposed draft site permit.

1. Make a preliminary determination that a draft site permit may be issued; and approve the attached proposed draft site permit for the Kenyon Wind, LLC, project for distribution and public comment. Authorize EFP staff to initiate the public participation process found in Minnesota Rules 4401.0550.

2. Make a preliminary determination that a draft site permit may be issued; and amend or modify the attached proposed draft site permit for the Kenyon Wind, LLC, project for distribution and public comment. Authorize EFP staff to initiate the public participation process found in Minnesota Rules 4401.0550.

3. Make a preliminary determination that a draft site permit should be denied.

4. Make some other decision deemed more appropriate.

B. Advisory Task Force

1. Authorize DOC EFP staff to establish an advisory task force, and develop a structure and charge for the task force limited to identifying issues, impacts and mitigation measures to be included in a final site permit. The advisory task force shall expire upon completion of its charge or upon the close of the public comment period required under Minnesota Rule 4401.0550, Subp. 3.

2. Take no action on an advisory task force at this time.

3. Determine that an advisory task force is not necessary.

4. Make another decision deemed more appropriate.

EFP Staff Recommendation. Staff recommends Options A1, and B2 or B3.