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December 10, 2008

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 30
St. Paul, MN 55101-2147

**Re: Comments and Recommendations of the Minnesota Department of Commerce
Office of Energy Security Energy Facility Permitting Staff
Docket No. IP-6605/WS-06-1445**

Dear Dr. Haar,

Attached are the comments and recommendations of the Minnesota Department of Commerce Energy Facility Permitting Staff in the following matter:

**In the Matter of the Petition for Amendment to Site Permit for Kenyon Wind
LLC in Goodhue County, Minn.**

The Department EFP staff recommends that the Commission amend the permit condition which require Kenyon Wind, LLC, to have a Power Purchase Agreement secured by December 31, 2008. We recommend that the date be extended by 60 days in order to allow adequate time for public comment on the Petition for Amendment.

Staff is available to answer any questions the Commission may have.

Sincerely,

Deborah R. Pile
Supervisor
Energy Facilities Permitting
651-297-2375

Enclosure



**BEFORE THE MINNESOTA PUBLIC UTILITIES
COMMISSION**

**COMMENTS AND RECOMMENDATIONS OF THE
OFFICE OF ENERGY SECURITY
ENERGY FACILITY PERMITTING STAFF**

DOCKET No. IP-6605/WS-06-1445

Meeting Date: December 18, 2008.....Agenda Item # _____

Company: Kenyon Wind LLC.

Docket No. IP-6605/WS-06-1445

**In the Matter of the Petition for Amendment to Site Permit for
Kenyon Wind LLC in Goodhue County, Minn.**

Issue(s): Should the Commission amend the permit condition requiring Kenyon
Wind, LLC, to have a Power Purchase Agreement secured by December
31, 2008?

OES Staff: Deborah Pile..... 651-297-2375

Relevant Documents

Petition for Amendment to Site Permit, Goodhue County, Minn.....12/5/08
Order Issuing a Site Permit for Kenyon Wind.....7/18/07

The enclosed materials are work papers of the Office of Energy Security 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.

This document can be made available in alternative formats; i.e. large print or audio tape
by calling (651) 201-2202 (Voice). Citizens with hearing or speech disabilities may call
through Minnesota Relay at 1-800-627-3529 (TTY relay service) or by dialing 711.

For project related documents, see eDockets (06-1445) or the PUC Facilities Permitting
website at <http://energyfacilities.puc.state.mn.us/Docket.html?Id=18946>.

Statement of the Issue

Should the Commission amend the permit condition requiring Kenyon Wind, LLC, to have a Power Purchase Agreement secured by December 31, 2008?

Introduction and Background

The Minnesota Public Utilities Commission issued a Site Permit to Kenyon Wind, LLC, to construct an 18.9 Megawatt Large Wind Energy Conversion System (LWECS) in Goodhue County, Minnesota, on July 18, 2007, pursuant to Minnesota Rules Chapter 7836. The permit provided that the project would consist of up to 9 Suzlon Energy S-88 2.1 megawatt turbines, that construction would commence within two years of permit issuance and that the permit would become null and void if a power purchase agreement was not obtained by December 31, 2008, among other conditions.

On December 3, 2008, the Commission received a request from Kenyon Wind, LLC, to amend its site permit pursuant to Minnesota Rule 7836.1300. The requested amendments center on allowing flexibility in turbine type, due to technical issues with the Suzlon S-88, and allowing more time for commencing construction and arranging sale of the power.

Of immediate concern to Kenyon Wind, LLC, is Permit Condition III. J. 4., which states:

In the event the Permittee does not obtain a power purchase agreement by December 31, 2008, the Permit shall be null and void.

Kenyon Wind, LLC, has requested that the Commission stay (toll) the running of the Permit as of December 31, 2008, until the Commission acts on its Petition to Amend. Persons interested in the Kenyon Wind project have been notified of the Commission's meeting on this issue.

Regulatory Process and Procedures

Under Minnesota Rule 7836.1300, Subp.2., the Commission may amend a site permit for an LWECS at any time if the commission has good cause to do so. Further, Minnesota Rule 7836.1300, Subp. 4, provides that the commission may initiate action to consider amendment or revocation of a site permit for an LWECS on its own initiative or upon the request of any person.

The rule states that no site permit may be amended or revoked without first providing notice and affording due process to the permit holder. However, no specific notification process is provided.

OES EFP Staff Discussion

The general practice followed in other similar matters has been to provide a ten-day period for interested persons to submit comments on a request. Staff then compiles and evaluates any comments received as part of its development of Comments and Recommendations for the Commission's consideration. Given the submission date of the Petition to Amend and the Commission's December hearing schedule, these actions could not be accomplished prior to December 31.

EFP staff believes it is important for the public to have an opportunity to comment on the site permit amendments being proposed by Kenyon Wind, LLC, particularly since there was significant public interest in this project when it went through the permitting process. However, commencing this review process without modifying Permit Condition III. J. 4. will result in the permit becoming null and void.

Staff suggests that amending Permit Condition III. J. 4. to extend the date for obtaining a power purchase agreement by 60 days would offer time for public comment while preserving the Permittee's option to move forward with the project if the Petition to Amend is granted. A 60-day extension in no way presupposes any particular action by the Commission on the Permittee's request.

Minn. Rules, part 7829.3200, which addresses the three conditions for the Commission to consider when granting a variance to a rule, may offer guidance in evaluating the appropriateness of extending the date for obtaining a power purchase agreement.

A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule.

Taking no action on the extension renders the permit null and void, causing the Permittee the time and expense of repeating the permitting process.

B. granting the variance would not adversely affect the public interest.

The extension enables fuller public participation and in no way prejudices the final outcome of the Petition.

C. granting the variance would not conflict with standards imposed by law.

Staff is unaware of any way by which an extension would conflict with other standards imposed by law.

EFP staff anticipates that the public comment and permit amendment review process can be accomplished within a reasonable time frame and that this matter would be back before the Commission in January 2009.

Commission Decision Options

- A. Amend Permit Condition III. J. 4. of the Kenyon Wind, LLC, Large Wind Energy Conversion System Site Permit to extend the date for obtaining a power purchase agreement by 60 days in order to allow adequate time for public comment on the Petition for Amendment.
- B. Take no action, thereby allowing the permit to become null and void pursuant to Permit Condition III. J. 4.
- C. Make some other decision deemed more appropriate.

EFP Staff Recommendation: Staff recommends Option A.