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January 28, 2009

Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
127 7<sup>th</sup> 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 Office of Energy Security Energy Facility Permitting Staff in the following matter:

**In the Matter of the Site Permit issued to Kenyon Wind, LLC, for a Large Wind Energy Conversion System in Goodhue County, Minn.**

The OES EFP staff recommends that the Commission amend the site permit per Kenyon Wind, LLC's petition.

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: February 5, 2000 .....Agenda Item # \_\_\_\_\_

Company: Kenyon Wind LLC.

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

**In the Matter of the Site Permit issued to Kenyon Wind, LLC, for a  
Large Wind Energy Conversion System in Goodhue County, Minn.**

Issue(s): Should the Commission amend the site permit per Kenyon Wind, LLC’s  
petition?

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

**Relevant Documents**

- Kenyon Wind LLC Reply Comments.....1/23/2009
- CFERS, LLC, R. Foss Comments On Petition For Amendment.....1/14/2009
- CFERS, LLC, Objection To Kenyon Wind, LLC Amendment.....12/30/2008
- Notice of Comment Period on Petition for Amendment.....12/29/2008
- 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.

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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 site permit per Kenyon Wind, LLC's petition?

## **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 nine 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, was Permit Condition III. J. 4., which provided that the Permit shall be null and void if the Permittee did not obtain a power purchase agreement by December 31, 2008.

At its December 18, 2009, meeting, the Commission voted to amend Permit Condition III. J. 4., by extending the date for obtaining a power purchase agreement by 60 days in order to allow time for public comment on Kenyon Wind's amendment requests.

Notice of Comment Period on the Petition for Amendment was issued by Office of Energy Security (OES) Energy Facility Permitting (EFP) on December 29, 2008. It was mailed to all persons on the EFP project list for this docket. Comments were accepted through January 16, 2009. Kenyon Wind, LLC, was asked by EFP staff to submit responses to those comments by January 23, 2009.

## **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.

## **Kenyon Wind, LLC, Requested Amendments**

Kenyon Wind, LLC, is requesting four amendments to its Large Wind Energy Conversion System Site Permit.

**1. Project Description.** Section II of the permit specifically calls for the project to consist of up to nine Suzlon Energy S88 2.1 megawatt (MW) wind turbines with a combined nominal nameplate capacity of 18.9 MW. Kenyon Wind is requesting that this description be changed to allow for more flexibility in turbine choice.

Rather than name a specific turbine, the requested amendment identifies five possible turbines that may be used in the project and limits combined nominal nameplate capacity to 18.9 MW "or 20 Megawatts if the interconnection agreement is amended to allow the greater capacity."

In its reasons for the amendment, Kenyon notes technical and reliability issues with the Suzlon S88. Kenyon also states that the "total capacity of the wind farm will be not greater than 18.9 megawatts" no matter which turbine is used.

**2. Turbine Spacing.** Section III. E. 5., the Permit Condition on Turbine Spacing, refers to Exhibit 1. This Exhibit shows turbine locations for the nine Suzlon Energy S88 2.1 MW wind turbines. Kenyon Wind offers two replacement Exhibits, A1 and A2, showing potential locations for the largest and smallest turbines chosen to replace the Suzlon Energy S88, 9 2.0 MW turbines and 12 1.5 MW turbines, respectively.

**3. Power Purchase Agreement.** Section III J. 4., requires that the permittee obtain a power purchase agreement for the electricity generated by the project and that the permit becomes null and void if the agreement is not obtained by December 31, 2008. Kenyon Wind is requesting that the language of this section be amended to allow them to pursue "some other enforceable mechanism" in addition to a power purchase agreement, and that the date be changed to December 31, 2010.

Kenyon Wind states that this change will allow more flexibility in arranging for sale of the electricity generated by the project. Part of this need stems from the fact that Kenyon Wind's initial equity arrangement included use of the Suzlon Energy S88 turbines, which the permittees no longer wish to use.

**4. Failure to Commence Construction.** Section III K. 2., provides that the Commission may revoke the permit if Kenyon Wind has not commenced construction within two years of permit issuance. Kenyon Wind is requesting that this language be amended so that the two year period begins on the date the amendment is granted.

Kenyon Wind cites delays in MISO Group 5 study, turbine availability and turmoil in the debt and credit markets among its reasons for requesting this extension.

## **Comments on Amendments and Applicants Reply**

Two comment letters were received on Kenyon Wind's Petition for Amendment by Citizens for Environmental Rights & Safety (CFERS), LLC: one by Michael Chase, President, CFERS, and one by Russell Foss, a CFERS member. Both object to requested amendments and request that the Commission allow the permit to expire. Their specific objections and Kenyon Wind's responses to those objections are provided below.

**Lack of Power Purchase Agreement Violates C-BED.** CFERS (Michael Chase) argues that the permit should not be extended because Kenyon Wind was submitted as a C-BED project and does not currently have an enforceable C-BED Power Purchase Agreement.

Kenyon Wind counters that it is actively engaged in the Power Purchase Agreement process, including responding to C-BED requests for proposals, but that nothing in existing legislation or regulation requires this project to continue as a C-BED project.

**Significant Turbine, Configuration Changes.** CFERS (Michael Chase) argues that the requested amendment contains insufficient detail and that some of the turbines in the 12-turbine plan appear to encroach on the wind rights of adjacent properties.

Kenyon Wind counters that its request is intended to give it the ability to elect between viable equipment and that it is not a request to exceed the 18.9 MW capacity originally authorized.

**Events Causing Delay Should Have Been Foreseeable.** CFERS (Michael Chase) argues that the project was poorly planned and that the events cited should have been identified and mitigated during planning.

Kenyon Wind counters that the project was well planned and that Kenyon Wind, like all individuals and businesses in today's financial climate, must adjust its financial plan.

**Low Wind Capacity Level.** CFERS (Michael Chase) argues that low wind capacity levels might be making investors reluctant to become involved with this project.

Kenyon Wind counters that commercial wind analysis indicates that the wind resource is viable and notes that there are existing viable projects in the area and others under consideration.

**Concern With Permitting Process and Compliance.** CFERS (Russell Foss) raised various issues regarding the original permitting process and concern that the permittees remain compliant with all the terms and conditions of the permit throughout its life.

Kenyon Wind counters that these issues were addressed in the original permitting process and would continue to be addressed by Kenyon Wind and Commission staff.

## **OES EFP Staff Discussion**

EFP staff believes that the rule requirement "that no site permit may be amended or revoked without first providing notice and affording due process to the permit holder" has been met through the notice issued by OES and the opportunity provided for the applicant to reply to comments received.

The question remaining is for the Commission to determine whether it has "good cause" to grant the requested amendments.

**Amendments 1 and 2.** With regard to amendment requests 1 and 2, EFP staff believes that flexibility in turbine type is appropriate. Recent permits issued by the Commission are generally not tied to a particular turbine, specifically because of issues of availability.

For example, the Sibley County Wind Project (Docket No. IP-666/WS-08-208) site permit issued by the Commission on September 23, 2008, provides that "The Project will consist of up to 13 1.5 to 2.0 MW wind turbines with a combined nominal nameplate capacity of no more than 20 MW." The Applicant in that docket was considering three possible wind turbine generators for the Project: a Vensys 1.5 MW turbine, a Vestas 1.65 turbine, or a 2.0 Suzlon S88 turbine. Depending upon the turbine model selected the Applicant proposed to install 10-13 wind turbine generators.

A similar approach was used in the Comfrey Wind Project permit issued January 15, 2008 (Docket No. IP-6630/WS-07-318) and Elm Creek Wind Project permit issued January 15, 2008 (Docket No. IP-6631/WS-07-388).

Kenyon Wind's request, however, is total capacity of the wind farm should remain not greater than 18.9 megawatts.

Staff agrees with the comments of CFERS, LLC, that more specificity as to selected turbine and resulting layout will be necessary. Section III A. 1., of the Kenyon Wind site permit requires submittal of a Site Plan prior to construction:

"Prior to commencing construction, the Permittee shall submit to the PUC or Commission a site plan for all turbines, roads, electrical equipment, collector and feeder lines and other associated facilities to be constructed and engineering drawings for site preparation, construction of the facilities, and a plan for restoration of the site due to construction."

Staff believes the needed specificity could be obtained by requiring that Kenyon Wind verify compliance with all permit setback conditions as part of the Site Plan review process.

In addition, Section III, J. 1., provides that the Commission can request documentation of wind rights.

"The Permittee shall advise the PUC of the obtaining of exclusive wind rights within the boundaries of the LWECS authorized by this Permit within 30 days of receiving such wind rights. The Permittee shall submit documentation of such exclusive wind rights if requested by the PUC."

Exercising this option would address CFERS concern that some of the turbines appear to encroach on the wind rights of adjacent properties.

**Amendment 3.** With regard to amendment request 3, EFP staff believes that giving Kenyon Wind the full latitude provided by rule in arranging for sale of the facility's output is appropriate.

Kenyon Wind is correct in noting that the phrase "other enforceable mechanism" is included in Minnesota Rule 7836.1100. More recent permits, including the three cited above, have included this language to provide permittees flexibility. Earlier permits cited only the power purchase agreement portion of the rule because this was the commonly used mechanism for sale of electricity. The Kenyon Wind site permit is predicated on the project being C-BED; siting requirements do not vary based on type or character of ownership. Staff is unaware of anything in existing legislation or regulation that would require this project to continue as a C-BED project.

Likewise, Kenyon Wind's request for addition time seems reasonable. The rule provides that the Commission may establish a date by which the permittee must obtain a power purchase agreement or other enforceable mechanism, but it does not require the Commission to do so. The Kenyon Wind permit requires that a power purchase agreement be obtained by December 31, 2008, 17 months after the permit was issued. Most permits allow permittees three years to obtain such agreements.

**Amendment 4.** With regard to amendment request 4, staff agrees that turbine availability, turmoil in the debt and credit markets and other factors can cause project delays beyond a permittee's control. Most permits, including the three examples cited above, allow permittees three years to commence construction. The Kenyon Wind site permit allowed only two. Thus, amending the permit to require commencement of construction within two years of issuance of the amendment would give them 3.5 years from the date of issuance of the permit.

Finally, staff believes that the environmental and process issues raised in the comment letters were addressed in the original permitting process and will continue to be addressed through enforcement of the site permit conditions.

## Commission Decision Options

A. Amend the Kenyon Wind, LLC, Large Wind Energy Conversion System Site Permit as requested in its December 1, 2008, Petition for Amendment.

B. Amend the Kenyon Wind, LLC, Large Wind Energy Conversion System Site Permit as requested in its December 1, 2008, Petition for Amendment, with the following change to Amendment 1:

**Proposed amended language:**

The LWECS authorized to be constructed in this Permit is referred to as Kenyon Wind project and will be owned and operated by Kenyon Wind, LLC. The project will consist of wind turbines with a combined nominal nameplate capacity of not greater than 18.9-Megawatts ~~or 20-Megawatts if the interconnection agreement is amended to allow the greater capacity.~~

Turbines which may be utilized in this project include the following:

C. Adopt the following additional amendments to the Kenyon Wind, LLC, Large Wind Energy Conversion System Site Permit:

Section III A. 1. Prior to commencing construction, the Permittee shall submit to the PUC or Commission a site plan for all turbines, roads, electrical equipment, collector and feeder lines and other associated facilities to be constructed, verification of compliance with all permit setback conditions and engineering drawings for site preparation, construction of the facilities, and a plan for restoration of the site due to construction.

Section III, J. 1. The Permittee shall advise the PUC of the obtaining of exclusive wind rights within the boundaries of the LWECS authorized by this Permit within 30 days of receiving such wind rights. The Permittee shall submit documentation of such exclusive wind rights ~~if requested by the PUC.~~

D. Deny the Petition for Amendment, thereby allowing the permit to become null and void pursuant to Permit Condition III. J. 4.

E. Make some other decision deemed more appropriate.

**EFP Staff Recommendation:** Staff recommends Options B. and C.