

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd
J. Dennis O'Brien
Thomas Pugh
Phyllis A. Reha
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: December 23, 2010

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

ORDER DENYING PETITION AND
ALLOWING SITE PERMIT TO EXPIRE

PROCEDURAL HISTORY

On July 18, 2007, the Commission issued a site permit to Kenyon Wind, LLC (Kenyon Wind or the Permittee) to construct an 18.9 MW large wind energy conversion system in Goodhue County.

On February 18, 2009, the Commission granted the petition of Kenyon Wind to amend the site permit in four ways: to change the type of wind turbines to be deployed, to change the locations of those turbines within the boundaries of the site permit, to grant additional time to secure a power purchase agreement or other enforceable mechanism for the sale of the project's output, and to grant additional time to begin construction.¹ Under the amended site permit, Kenyon Wind must obtain a power purchase agreement or some other enforceable mechanism for the sale of the electricity by December 31, 2010, and begin construction by February 18, 2011, or the amended permit is null and void.

On October 21, 2010, Kenyon Wind again filed a petition to amend the site permit. The Permittee seeks to amend the site permit:

- 1) to extend the time line in which to obtain a power purchase agreement or other enforceable mechanism for the sale of electricity from December 31, 2010 to December 31, 2012 (Section III.J.4 of the site permit); and
- 2) to extend the time frame in which to commence construction from two years of the issuance of the amended permit (February 18, 2011) to February 18, 2013.

¹ The original site permit required Kenyon Wind to have obtained a power purchase agreement for the energy generated by December 31, 2008, or the permit is null and void. The original site permit required construction to commence two years from the issuance of the permit, or July 18, 2009.

On November 3, 2010, a notice of comment issued, requesting comments on the proposed site permit amendments. Eight persons filed comments in response to the notice, all of which opposed granting the petition to amend the site permit to extend the time.

On December 3, 2010, the Energy Facility Permitting staff of the Office of Energy Security of the Minnesota Department of Commerce (EFP) submitted comments, recommending that the Commission grant Kenyon Wind's request to extend the time within which to obtain a power purchase agreement, but recommending that the extension of time be limited to an additional nine months, instead of the two years requested in Kenyon Wind's petition.

On December 8, 2010, Kenyon Wind filed a response, agreeing with the recommendations of the EFP staff and requesting clarification of the OES's recommendations.

On December 9, 2010, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Legal Standard

Minn. Stat. §216F. 03 provides:

The legislature declares it to be the policy of the state to site LWECS in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

Minnesota Rules 7854.1100, subp. 3 provides:

Subp. 3 Power purchase agreement.

A site permit does not authorize construction of the project until the permittee has obtained a power purchase agreement or some other enforceable mechanism for sale of the power to be generated by the project. If the permittee does not have a power purchase agreement or other enforceable mechanism at the time the permit is issued, the commission shall provide in the permit that the permittee shall advise the commission when it obtains a commitment for purchase of the power. The commission may establish as a condition in the permit a date by which the permittee must obtain a power purchase agreement or other enforceable mechanism or the site permit is null and void.

Minn.Rules 7854.1300, subp. 2 provides that the commission may amend a site permit for an LWECS at any time if the commission has good cause to do so.

II. Positions of the Parties

A. Kenyon Wind's Proposal

Kenyon Wind petitioned to amend its site permit to extend the time in which to obtain a power purchase agreement or some other enforceable mechanism for sale of the electricity until December 31, 2012, and to extend the time within which to begin construction until February 18, 2013. In support, Permittee asserted that its 18.9 MW wind project is commercially viable, supported by participating landowners and ready to build.

Kenyon Wind stated that the only impediment to immediate construction is a viable purchaser for the energy produced. Kenyon Wind asserted that relatively few new power purchase agreements have been issued for wind projects and little new development has occurred over the past year, all due to the general state of the economy.

B. EFP Staff Comments

EFP staff addressed the Permittee's request for a second extension of its site permit. EFP staff noted that since the Commission assumed authority to issue site permits, only Kenyon Wind has received an extension of time to obtain a power purchase agreement or some other enforceable mechanism. Further, EFP pointed out that if the Commission intended for such permits to be valid in perpetuity without the permittee ever securing a mechanism by which to sell the electricity, time limitations would not have been incorporated into permits and agency rules.

EFP staff rejected Kenyon Wind's proposal to extend by two years the time within which to obtain a power purchase agreement and commence construction. EFP staff recommended alternatively that the Commission extend the time in which to secure a power purchase agreement by nine months, or until September 30, 2011 – and to extend the time by which to begin construction until November 18, 2011.

C. Public Comments

The Commission received eight comments from the public in response to Kenyon Wind's petition, including seven landowners in the area and one community group. All of the comments received opposed granting the petition to amend the site permit.

Many of the comments raised concerns that the project is simply not viable, as it has not obtained a power purchase agreement despite having already received a two-year extension in 2009 from the Commission to do so. Comments pointed out that many viable wind projects have moved forward since 2007; other comments asserted that the wind projects which have moved forward have a better wind resource than what is available at Kenyon Wind's proposed site, and are in areas where the population density is less than in Goodhue County.

Other comments focused on claims that property values would decrease if the project were built; that the health impact from turbine noise has not been adequately considered; and that allowing the

site permit to be extended essentially shields, or “grandfathers” the project from compliance with the zoning ordinance recently passed by the Goodhue County Commissioners in October 2010.²

III. Commission Action

The wind facility siting rules allow the Commission to set time limits in site permits because the public interest requires providing as much certainty and stability as possible for residents, landowners, and communities likely to be affected by potential wind developments. Such time limits promote the siting of LWECs in an orderly manner, consistent with environmental preservation, sustainable development, and the efficient use of resources. Minn. Stat. §216F.02.

Having considered the matter, and the positions of the parties and public comments, the Commission finds that there is not good cause to grant Kenyon Wind more time to attempt to secure a power purchase agreement. Having already once granted Kenyon Wind a two year extension of time within which to secure a power purchase agreement, the Commission does not find it in the public interest to grant the Permittee additional time.

Kenyon Wind has had more than a fair and reasonable chance to get its wind project up and running – some three and one half years. No other project has received extensions of the length already granted here. And there is no basis to conclude that the underlying circumstances, including the economy, have changed or will change dramatically in the near future such that a power purchase agreement is imminent. The project does not claim to be on the verge of concluding a power purchase agreement, but instead has simply indicated its intent and interest in pursuing such possibilities with Xcel Energy and Minnesota Power.

Further, if the main obstacle to Kenyon Wind’s success is the state of the economy, it is unclear why its new ownership would make a substantial difference in its ability to secure a power purchase agreement within the time frame recommended by the EFP. Other wind projects have successfully attracted buyers and broken ground during this period, weakening Kenyon Wind’s claim that it has been impossible to proceed.

For all these reasons, the Commission concludes that Kenyon Wind has not demonstrated good cause for the extraordinary relief it seeks, nor justified exposing local residents to continued uncertainty about the future of their community, including attendant complications with land use planning and the potential impact on local property values in the project footprint.

The Commission therefore denies Kenyon Wind’s Petition for Amendment of its Site Permit, filed October 21, 2010, and will allow it to expire on December 31, 2010, as set forth in Section III.J.4 of the amended site permit.

It is so ordered.

² On October 5, 2010, the Goodhue County Board of Commissioners adopted amendments to the Goodhue County Zoning Ordinance, specifically Article 18 Wind Energy Conversion System Regulations.

ORDER

1. Kenyon Wind's Petition for Amendment of its Site Permit, filed October 21, 2010, is denied. The site permit will be allowed to expire on December 31, 2010, under Section III.J.4 of the permit.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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