

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

PUC Docket No.IP-665/WS-06-1445

**PETITION FOR REHEARING AND RECONSIDERATION OF DECISION AND
ORDER DENYING THE PETITION FOR AMENDMENT OF SITE PERMIT AND
ALLOWING SITE PERMIT TO EXPIRE**

INTRODUCTION

By this Petition, Kenyon Wind, LLC hereby requests that the Minnesota Public Utilities Commission reconsider its decision of December 9, 2010, as set forth in its Order of December 23, 2010, in which it denied Kenyon Wind's Petition on October 21, 2010 to amend its Site Permit by extending time in which to obtain a Power Purchase Agreement or other enforceable mechanism for the sale of electricity from December 31, 2010 to December 2012 (Section III. J. 4 of the Site Permit) and to extend the timeframe in which to commence construction from two years of the issuance of the Amended Permit (February 18, 2011) to February 18, 2013 and, thereby, ordering that the Site Permit be allowed to expire on December 31, 2010, under Section III. J. 4 of the Permit.

It is respectfully submitted that Kenyon Wind's request, which sought to amend Site Permit in only one respect, the extension of time in which to obtain a Power Purchase Agreement and, therefore time in which to begin construction represents a fair and reasonable request for the continuation and completion of a viable wind project.

There is already an extensive record upon which the Commission can determine that Kenyon Wind is entitled to a continuation of its Site Permit. No statutory time limit exists which would compel the Commission to have taken the action of which it has. Rather, the record supports the granting of an extension of time in which Kenyon Wind, LLC may obtain a Power Purchase Agreement, or some other enforceable mechanism for the sale of earth electricity to December 31, 2012, and the time within which to begin construction to February 18, 2013. Good cause exists for the Commission to reconsider its decision and to grant Kenyon Wind, LLC's request for an extension of time in which to complete its project and Kenyon Wind, LLC has met all of the requirements for granting an extension of time to obtain a Power Purchase Agreement and commence construction.

Included with this Petition is a Memorandum that sets forth factual points and authorities which support Kenyon's request for a rehearing and reconsideration of the Commission's decision. To briefly summarize those points and authorities:

- A. Kenyon Wind is a financially viable wind project.
- B. The project has a viable wind resource.
- C. The project has a grid interconnection and an executed Agreement is current in suspension.
- D. The project has met considerable milestones and it is on track to achieve Power Purchase Agreement.
- E. Economic circumstances are such that few similarly situated projects of the size of Kenyon have been built over the past two (2) years.
- F. The realistic timeframe for project like Kenyon Wind is two (2) to five (5) years.

- G. Goodhue County Commission does not oppose the extension of Kenyon's Permit and does not seek application of the Goodhue County Wind Ordinance to this project.
- H. The project enjoys a steadfast support of its landowners, the land on which the project is situated is zoned for commercial use and, specifically, wind energy development, and claims of perspective diminution of land values were studied at the time of the issuance of the permit and studies revealed that wind construction would not adversely impact residential property values.
- I. The Kenyon Wind project is reasonable in scope and capable of timely completion.

Therefore, Kenyon Wind, LLC requests that the Commission reconsider its December 23, 2010 Order denying Petition and allowing Site Permit to expire and take the following action:

1. To extend the timeline 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 timeframe in which to commence construction from two (2) years of the issuance of the Amended Permit (February 18, 2011) to February 18, 2013 or, in the alternative;
3. Accepting Energy Facilities Permitting Staff recommendation that the Commission extend time in which to secure power purchase agreement by nine (9) months, or until September 30, 2011 - and extend time by which to begin construction to November 18, 2011.

Dated: January 11, 2011

Respectfully Submitted,

Kenyon Wind, LLC

By *Tom Rock*
Tom Rock
On Behalf of Kenyon Wind, LLC

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**MEMORANDUM OF KENYON WIND, LLC IN SUPPORT OF PETITION FOR
REHEARING AND RECONSIDERATION OF DECEMBER 23, 2010 DECISION**

INTRODUCTION

Kenyon Wind's proposed 18.5MW Wind Project in Goodhue County is commercially viable, embraced by its landowners and ready to build. The only factor which inhibits immediate construction is the off-taker status and, now, continuation of the Site Permit issued to Kenyon Wind, LLC for construction of the facility.

Office of Energy Security staff has reviewed the existing record and Kenyon Wind's application. Please see the comments and recommendations of the Minnesota Office of Energy Security, Energy Facility Permitting Staff (EFP Staff) in connection with this matter dated December 1, 2010, in which the Energy Security Permitting Staff's recommends that the Kenyon Wind petition for amendment to Site Permit be granted and are summarized as follows:

1. That in the event Kenyon Wind does not obtain a power purchase agreement by September 30, 2011 Kenyon Wind must advise the PUC the reason for not having such commitment. In such event, the PUC may determine whether this permit should be amended or revoked. No amendment or revocation of this permit maybe undertaken except in accordance with applicable statutes and rules,

including Minnesota Rule 7854.1300. Further, that Kenyon Wind shall have completed the preconstruction surveys required in Paragraph III. D. and commenced construction of the IW ECS by November 18, 2011; and

2. That Kenyon Wind submit a proposal to the PUC for conduct of a noise study; and include other conditions deemed appropriate by the Commission.
3. That OES EFP staff prepare an amended and restated Site Permit that incorporates all previous amendments.

Kenyon Wind's response to comments issued December 8, 2008 acknowledged the office of Energy Security, Energy Facility Permitting Staff recommendation proposed in response to Kenyon Wind, LLC's Petition and advised the Commission that the staff's recommendations represent a viable path for timely construction of this project.

The Commission's decision of December 23, 2010 denied, in total, Kenyon Wind's Petition and issued its Order allowing the Site Permit to expire.

Upon reconsideration, and for the following reasons, Kenyon Wind, LLC respectfully requests that the Commission follows staff recommendations and issue amended Site Permit or, alternatively, that Kenyon Wind, LLC's original permit be amended as requested by Kenyon Wind's Petition for amendment.

DISCUSSION

A. The project is financially viable. This is not a case in which the perspective project lacks financial capacity to proceed to fruition. Indeed, this fact is essentially recognized by the Commission's decision. As noted by Petitioner's Kenyon Wind's response to comments, the project is now held by Kenyon Wind Holdings, LLC, a limited liability company by investment funds affiliated with EBF & Associates.

EBF has an established track record as an investor in wind development projects and was an early investor in Midwest Renewable Energy Partners which has built or developed over 360MW of projects to-date. EBF has formed Compass Wind, a wind development company focused on the Rocky Mountain Region with project sizes of 20 to 30MW each. EBF has been an active investor in other energy assets, including over 1,200MW of gas-fired turbine equipment, an 800,000 ton Municipal Solid Waste Processor (Resource Recovery Technologies), and a natural gas distribution utility.

It is not disputed that the project is commercially viable and well backed by a substantial financial partner. Moreover, as represented at the Commission hearing in this matter, EBF & Associates has acquired wind turbine equipment for use in wind projects, and is in a position to immediately deploy the equipment upon obtaining a Power Purchase Agreement.

B. The project has a viable wind resource.

Contrary to assertions made by comment and argument before the Commission, the project has a viable commercial wind resource. The project features a Class 3/4 wind resource with an average wind speed at 80 meters above ground ("AGL") of approximately 17.6 mph. Using GE 1.6MW XLE wind turbines as the reference turbine for this proposal, the project has a net capacity factor projected at approximately 38%, an annual net energy production is projected to be approximately 58GWH, based upon analysis programs used by AWS TrueWind and WindLogics Forecasting.

C. The project has a viable interconnection.

The project will be interconnecting to the transmission grid by making a line-tap connection to the adjacent 69 kV transmission line. This transmission line is owned by Xcel Energy and runs through the project area. The project has secured a Queue position (G-620) for

an 18.9MW grid interconnection with the Midwest ISO. Feasibility, System Impact and Facility studies have been completed. An Interconnection Agreement has been executed and is currently in suspension mode.

D. Substantial milestones have been met toward selling the Power.

Kenyon Wind has advanced in a deliberate and organized fashion towards completion of a Power Purchase Agreement. It can demonstrate the below list of milestones which have been met on efforts towards a viable power purchase agreement.

In 2010, Kenyon Wind submitted eleven proposals and engaged in the following discussions for the sale of power: CBED and regular submission responses to a request for proposal from Xcel Energy (October 2010); submitted an unsolicited proposal to Google (September 2010); engaged in discussions with one developer (name withheld for confidentiality purposes) regarding fulfilling a renewable power supply need for a corporate customer (September 2010); submitted an unsolicited proposal and initial discussions with Great River Energy (Summer 2010); engaged in discussions with one developer (name withheld for confidentiality purposes) regarding being able to join their PPA discussions with a large local utility that would have resulted in a PPA for our project (name withheld for confidentiality purposes) (Summer 2010); engaged in discussions with a large city in Minnesota (name withheld for confidentiality purposes) regarding selling the wind power generated under a long-term contract; submitted an unsolicited proposal to Minnesota Power (July 2010); submitted an unsolicited proposal, held several discussions, and management discussed with their board, for Adams-Columbia Electric Cooperative (July 2010); submitted an unsolicited proposal for a build-own-transfer concept to Xcel Energy (May 2010), and submitted an unsolicited proposal,

met with and engaged in discussions with Xcel Energy and was ultimately postponed until the upcoming RFP could be issued (February 2010).

In addition, Kenyon Wind had initial discussions with several additional utilities that decided not to pursue discussions further due to either their RPS requirements having been met and/or the utility no longer being in the marketplace: Madison Gas & Electric (June 2010); Wisconsin Energy Corporation (June 2010); Dairyland (June 2010); SMMPA (June 2010); Wisconsin Power & Light Company (May 2010); Manitowoc Public Utilities (May 2010); Marshfield Electric & Water Department (May 2010), and Wisconsin Public Power (May 2010).

Moreover, Kenyon Wind is currently in discussions and/or awaiting an RFP response from Minnesota Power, and two other entities for which we have entered Non-Disclosure Agreements. (We can make arrangements to discuss them on a proprietary information basis with the PUC Staff.) Our Minnesota Power proposal is a response to their 2010 Wind Resource Request, whereas the other two current discussions were initiated by Kenyon Wind.

Given the low natural gas prices and lower demand resulting from the Great Recession, Kenyon Wind has found that utilities are not moving very quickly in procuring new renewable wind projects, and this has forced Kenyon Wind to delay building the project. In addition, several of the large international wind developers have been building projects on a merchant basis using wind turbines that they had already procured, and these projects are then bidding into RFP's with a much lower price than new build projects can rationally justify, as these merchant projects alternative is a low spot power market. In the coming years, there will be opportunities for a community based project such as Kenyon Wind to obtain Power Purchase Agreements.

E. Current economic circumstances are such that the Kenyon project has not been unreasonably delayed.

Comments and argument at the Commission hearing suggest that the Kenyon project has failed to progress and is, somehow, simply "not viable". Comments suggested that many viable wind projects have moved forward since 2007 and that, somehow, the Kenyon project has not progressed in expedient and commercially viable fashion. Counsel for citizens group CFERS, LLC offered a listing of C-BED projects, which counsel suggested, illustrate that the Kenyon project has failed to move forward in reasonable time. It is respectfully submitted that the comparison made by the counsel CFERS is simply not valid as most of the projects on the list were projects involving one or two turbines and others did not go through the State permitting process. The present Kenyon project envisions nine (9) turbines. There was only one valid Minnesota PUC permitted project on the list that was of similar size - the Jeffers project.

The table below was submitted to the PUC by Carol Overland who was representing the CFERS, LLC. This table was provided to the commission to show that there are many CBED projects that have been able to acquire a PPA and move forward with construction. Actually, this table shows that there has been limited installation of C-BED wind projects in the last few years and even fewer projects of similar size to the Kenyon Project have been able to recently come online. Of the projects listed in this table, only the Jeffers wind project was permitted by the commission. The Jeffers wind project sought a state site permit prior to the application by the Kenyon project.

Since the Kenyon's 2007 application for a state site permit there have been a total of 30 additional wind projects that have applied for a state site permit with the PUC. Yet, not one of those 30 projects is on the list below as a completed C-BED wind project.

C-BED Projects List
(Community Projects > 100 kW installed since 2005)

Name	Location	Power Capacity (MW)	Developer	Local Owner	Equity Investor	Power Purchaser	Date Online
Mountain Lake	Mountain Lake, Cottonwood County	1.25	Mountain Lake Municipal Utility	Mountain Lake Municipal Utility		n/a, muni utility owned	Jun-07
Wing River Wind	Hewitt	2.5	PlainStates Energy	Wing River Wind		MN Power	Jul-07
Marshall Wind Farm	Lyon County	14.7	Rahn Group	Rahn Group	John Deere Wind Energy	Missouri River Energy Services	Apr-08
Cisco Wind Energy	Brewster	8	Cisco Wind Energy LLC	Cisco Wind Energy LLC	John Deere Wind Energy	Northern States Power	May-08
Ewington Wind Farm	Worthington	20	Ewington Energy Systems LLC	Ewington Energy Systems LLC	John Deere Wind Energy	Northern States Power	May-08
Odin	Cottonwood and Wantonwan Counties	20	Edison Mission Group/Rahn Group	Rahn Group	Edison Mission Group	Missouri River Energy Services	Jun-08
Brewster Wind	Brewster	2.1	Nobles	Nobles Electric Cooperative		n/a, co-op utility owned	Jul-08
Welcome Wind	Welcome	2.1	Federated	Federated Rural Electric Association		n/a, co-op utility owned	Jul-08
Jeffers	Cottonwood County	50	Wind Energy Developers, LLC	Wind Energy Developers, LLC	Edison Mission Group	Northern States Power	Oct-08
Hilltop Power	Pipestone	2	Hilltop Power LLC	Hilltop Power LLC		Xcel	Feb-09
Willmar	Willmar, Kandiyohi County	4	Willmar Municipal Utilities	Willmar Municipal Utilities		n/a, muni utility owned	Jul-09
Uilk	Pipestone	4.5	Project Resources Corporation	Uilk Wind LLC	TianRun Uilk, LLC	Xcel	Jan-10
Total		131.15					

The table below listing the historical development of C-BED wind projects was also provided to the commission by Carol Overland. A review of this table shows that there are many more projects that enter into negotiations for a PPA or come under contract for a PPA than there are projects that are able to be completed and come online. This is due to the protracted process involved in responding to a request for proposals for PPAs, which often involves a lengthy process even once selected to negotiate and finalize the execution of a PPA.

Historical C-BED Development

Date	Completed (MW)	Under Contract (MW)	In Negotiation (MW)	Total C-BED Projects (MW)
1/15/10	131.4	180.2	101.9	413.5
9/30/09	126.9	184.7	97.8	409.5
6/30/09	122.9	64.5	253.0	440.3
3/31/09	122.8	44.5	81.8	249.0
12/31/08	120.8	56.5	455.9	633.1
9/30/08	120.8	27.0	573.4	721.1
6/30/08	66.5	57.0	721.0	844.5
3/31/08	3.8	190.5	746.9	941.2
1/31/08	3.8	204.8	779.0	987.6
10/15/07	3.8	234.8	629.2	867.7
1/15/07		166.9	303.4	470.2

F. The Kenyon Wind project has progressed substantially and its circumstances are not unlike other projects.

When viewed in the context of others similarly situated projects, Kenyon Wind has progressed and has moved along at a reasonable timetable. Reference should be made to PUC permits issued for wind projects at a similar timeframe to that of Kenyon. Consider on-line information available for similar situated wind projects. The following four projects have been permitted by the Minnesota Public Utilities Commission and will, apparently, be in a position where it is necessary that they advise the Commission as to why construction hasn't started. These projects are similar in size and timeframe to the Kenyon Wind project. They include the following projects:

- Comfrey Wind Project, 31MW, Permit issued January 15, 2008
- Sibley County Wind Project, 20MW, Permit issued September 23, 2008
- Bear Creek I, 30MW, Permit issued May 19, 2009
- Bear Creek II, 17.5MW, Permit issued May 19, 2009

It is understood that each of the foregoing projects has not commenced construction. All are similar in size and timeframe to the Kenyon Wind project in which permit was issued July 18, 2007 and permit amended February 5, 2009 (it should be noted that the 2007 permit was, of

necessity, amended in 2009 as there was substantial problems with the Suzlon 2.1MW turbines allocated to the project pursuant to the then viable power purchase agreement). The above listing of projects all have existing permits which do not expire at any given time. It appears that only Kenyon Wind has been given a date certain termination for its permit. No explanation has been given as to why Kenyon has been treated differently. It is understood that the foregoing projects must advise the PUC why construction has not commenced within two (2) years and, at which time, the PUC may amend or revoke the permit. Such is not an automatic expiration such as was imposed by PUC and which the PUC now seeks to impose on Kenyon.

G. Goodhue County does not oppose Kenyon's requested amendment.

As was noted at the time of the Commission hearing, Goodhue County has not offered opposition to Kenyon's request for an extension of its Site Permit. This is so despite the fact that Kenyon's request for amendment was publicly advertised and noticed and the Goodhue County Counsel given adequate opportunity in the process. As represented in oral argument before the Commission, county commissioners, in discussions with the Petitioner, have acknowledged the effect of the request for amendment would be to continue the "grandfathering" of Kenyon's permit as exempt from the recent Goodhue County Citing Ordinance.

H. The project area is zoned for commercial wind development and the issue of real estate values taken under consideration in initial studies.

The project site proposes a low density and distributed citing of wind turbines. The project area is zoned commercial and a commercial zoning specifically contemplates wind energy development. At the hearing in this matter it was argued that neighboring residential landowners faced substantial uncertainty with regard to their property values due to concerns over the effect of wind energy development on their residents. It should be noted that the property is not high-density residential development. Rather, the subject area is farmland with

accompanying residential development. The impact of wind development was studied at the time of the issuance of the original site permit. Evidence was offered at public hearing and as part of the record in this case to the effect that wind energy development had no discernable impact on residential real estate in the project area. No quantitative evidence has been offered by those making current public comment which claims possible lowering of property values. The only study of this area and the potential impact of wind energy development finds there to be no financial impact. (See attached Consultant Report addressing the Kenyon Wind Farm Project Cherry Grove Township, Kenyon, Minnesota dated March 22, 2007.)

I. This project compares favorably with other projects in the Goodhue area.

The Kenyon Wind project is small - 18.9MW. It is situated over a relatively large land area and the density and sighting of turbines is to be contrasted with that proposed by the application of AWA Goodhue, LLC for Certificate of Need and Site Permit. That project is a 78MW wind project. This is an 18.9MW wind project. That project represents a high density of turbine and power equipment. This project envisions potentially only nine (9) wind turbines, over an extended land area.

CONCLUSION

For the reasons discussed above, the Commission should absolutely take another look at this matter and reverse its decision denying Kenyon Wind's Petition of October 21, 2010 and allowing Site Permit to expire. Ample information exists in the records upon which the Commission can and should determine that good cause exists to grant Kenyon's request. Kenyon's request, as modified by the staff recommendations represents a sound and viable path to construction of this facility.

Dated: January 11, 2011

Respectfully Submitted,
Kenyon Wind, LLC

John H. Daniels, Jr.

John H. Daniels, Jr.
On Behalf of Kenyon Wind, LLC