

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: February 18, 2009

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

ORDER AMENDING SITE PERMIT

**PROCEDURAL HISTORY**

On July 18, 2007, the Commission issued an Order in this case granting a site permit to Kenyon Wind, LLC (Kenyon or the Permittee) for an 18.9-megawatt large wind energy conversion system in Goodhue County.

On December 5, 2008, Kenyon Wind filed a petition 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.

The Commission issued an order granting a 60-day extension of the permit's December 31, 2008 deadline for securing a power purchase agreement, to prevent the permit from expiring while interested persons filed comments on the petition.

Two parties filed comments: the Energy Facility Permitting Staff of the Office of Energy Security of the Minnesota Department of Commerce (EFP Staff) and Citizens for Environmental Rights & Safety (CFERS). CFERS recommended denying the petition, for essentially the same reasons it had opposed granting the original site permit. The EFP Staff recommended granting the petition, with minor modifications to respond to specific concerns raised by CFERS.

On February 5, 2009, the petition came before the Commission.

**FINDINGS AND CONCLUSIONS**

**I. The Legal Standard**

Under Minnesota Rules 7836.1600, subp. 2, the Commission may amend a site permit for a large wind energy conversion system at any time for good cause.

## **II. The Positions of the Parties**

### **A. Kenyon's Proposal**

The Permittee proposed to amend four provisions of the site permit:

- (1) *Project Description, Paragraph II* – Kenyon asked to amend the project description portion of the permit, which stated that the project would use a specific brand and make of wind turbine. The Permittee stated that technical issues affecting reliability have arisen with the turbine originally selected and that Permittee planned to select and use a different turbine.
- (2) *Turbine Spacing, Section III. E. 5.* – Kenyon asked to amend the portion of the permit detailing turbine spacing, to reflect the new spacing necessitated by the proposed change in turbines.
- (3) *Power Purchase Agreement, Section III J. 4* – Kenyon asked to amend the portion of the permit stating that the permit becomes null and void if Kenyon does not have a power purchase agreement for the output of the project in place by December 31, 2008. Kenyon explained that it expects to promptly secure a power purchase agreement or other enforceable mechanism for the sale of its output, but that a combination of factors, including the current economic downturn and uncertainty regarding the continuation of the federal Production Tax Credit, have prevented it from meeting the December 31 end-date. It requested a two-year extension.
- (4) *Failure to Commence Construction, Paragraph K 2* – Kenyon asked to amend the portion of the permit placing it at risk of revocation if construction did not begin within two years of issuance, citing delays in securing transmission services, technical difficulties, and financing challenges posed by the current economic downturn. The Permittee requested a two-year extension from the date the permit was amended.

### **B. CFERS' Comments**

CFERS opposed the petition to amend the permit for essentially the same reasons it had opposed granting the permit in the first place. CFERS also claimed that the need for the amendments demonstrated that Kenyon lacked the foresight and planning skills required to construct and operate a large wind farm. The organization also argued that the proposed changes in turbine type and configuration raised issues about setback requirements and wind rights that should be addressed prior to construction.

### **C. EFP Staff Comments**

The EFP Staff stated that it considered Kenyon's proposed amendments reasonable and its explanations for missing the purchased power contract and construction deadlines persuasive. The Staff recommended granting the petition, with three modifications to address concerns raised by CFERS.

First, the Staff recommended eliminating the proposed reference in Permittee's filing to a possible 20-megawatt capacity for the wind farm, concurring with CFERS that the project has consistently been presented, analyzed, and certificated as having a nameplate capacity of 18.9-megawatts or less.

Second, the Staff recommended an additional amendment to the site permit to require the Permittee to verify its compliance with all setback conditions in the site permit prior to beginning construction.

Third, the Staff recommended amending the permit to require Permittee to submit documentation that it holds exclusive wind rights within the boundaries of the wind farm. The original permit had required documentation only at the Commission's request.

Finally, the Staff recognized that the two-year start-of-construction requirement in the site permit was also a rule requirement (Minn. Rules 7836.1200) and recommended varying the rule to permit a two-year extension.

### **III. Commission Action**

The Commission concurs with the EFP Staff that it is reasonable and in the public interest to amend the site permit as Permittee requests, with the modifications recommended by that Staff. Increased reliance on wind and other renewable generation remains a central goal of state energy policy, and this project remains a viable means of advancing that policy.

The Commission also concurs with CFERS that wind rights should be documented, setback compliance verified, and care taken to confirm that the project will not exceed the nameplate capacity under which it was analyzed and approved. The remainder of CFERS' concerns have been addressed in earlier proceedings in this docket.

The Commission will so order.

### **ORDER**

1. The Commission hereby grants the petition of Kenyon Wind LLC and hereby amends the site permit issued July 18, 2007 as requested, with the modification set forth below:

Proposed Amendment 1, regarding II. Project Description, is modified to eliminate the reference to a 20-megawatt nameplate capacity, as set forth below:

*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:*

2. The Commission adopts the following additional amendment to the site permit and amends the site permit as follows:

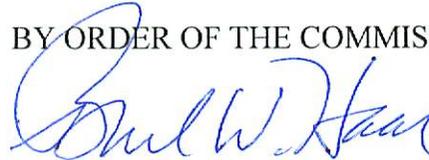
*Section III A. 1. Prior to commencing construction, the Permittee shall submit to the PUC or Commission a site plan for all turbines, roads, electrical equipment, collector and feeder lines and other associated facilities to be constructed, verification of compliance with all permit setback conditions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

3. The Commission adopts the following additional amendment to the site permit and amends the site permit as follows:

*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.*

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar  
Executive Secretary



(S E A L)

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