



**Energy Facility Permitting**  
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September 13, 2011

Dr. Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
127 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

**RE: In the Matter of the Site Permit of Bear Creek Wind Partners, LLC for a 47.5  
Megawatt Large Energy Conversion System in Todd and Otter Tail Counties**

Dear Dr. Haar:

Attached are the Comments and Recommendations of the Department of Commerce, Energy Facility Permitting (EFP) Staff for the issue: Should the Commission amend the site permit per Bear Creek Wind Partners, LLC's petition?

Included in the Comments and Recommendations is a proposed permit amendment.

The petition to amend the site permit was filed by:

John M. Ihle  
PlainStates Energy  
27451 S. Hwy. 34  
Barnesville, MN 56514

EFP staff recommends granting the petition for amendment. EFP staff is available to answer any questions the Commission may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ingrid Bjorklund', is written in a cursive style.

Ingrid Bjorklund  
EFP Staff

Attachment

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**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**COMMENTS AND RECOMMENDATIONS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE  
ENERGY FACILITY PERMITTING STAFF**

**DOCKET No. IP-6629/WS-07-297**

Meeting Date: September 22, 2011.....Agenda Item # 2

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Company: **Bear Creek Wind Partners, LLC**

Docket No. **IP-6629/WS-07-297**

**In the Matter of the Site Permit of Bear Creek Wind Partners, LLC for a  
47.5 Megawatt Large Wind Energy Conversion System in Todd and Otter  
Tail Counties**

Issue(s): Should the Commission amend the site permit per Bear Creek Wind Partners,  
LLC's petition?

EFP Staff: Ingrid E. Bjorklund .....651-297-7039

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**Relevant Documents**

Petition for Amendment to Site Permit.....June 3, 2011  
Public Comments ..... September 1, 2011  
Order Issuing a Site Permit to Bear Creek Wind Partners, LLC.....May 19, 2009

The enclosed materials are the work papers of the Department of Commerce (DOC) Energy Facility Permitting Staff (EFP). 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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## **Documents Attached**

### 1. Proposed Amendment

See eDocket filings (07-297) at <https://www.edockets.state.mn.us/EFiling/search.jsp>, or the Commission website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=19150> for project related documents.

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## **Statement of the Issues**

Should the Commission amend the site permit per Bear Creek Wind Partners, LLC's petition?

## **Introduction and Background**

The Minnesota Public Utilities Commission (Commission) issued a site permit to Bear Creek Wind Partners, LLC (Bear Creek or Permittee) to construct a 47.5 megawatt (MW) Large Wind Energy Conversion System (LWECS) in Todd and Otter Tail counties on May 19, 2009, pursuant to Minnesota Rules chapter 7836 (renumbered to 7854).

Under section III.J.4 of the site permit, Bear Creek is not authorized to commence construction of the project until it has obtained a power purchase agreement (PPA) or some other enforceable mechanism for sale of the electricity to be generated by the project and must advise the Commission of the reason for not securing a commitment if it has not done so within two years of permit issuance.

Under section III.K.2 of the site permit, Bear Creek must advise the commission if it has not completed the pre-construction surveys required in section III.D and commenced construction within two years of permit issuance.

On June 3, 2011, the Commission received a request from Bear Creek to amend its site permit to extend both the time in which to obtain a PPA or other enforceable mechanism and the deadline to begin construction to May 19, 2013. Bear Creek argues that the delay in securing a PPA is due to significant delays in the Midwest Independent Transmission System Operator (MISO) interconnection process. Bear Creek's project was assigned to MISO's Group 6 in May of 2006. Currently, the project is in the first Definitive Planning Phase (DPP) cycle under MISO's new process that resulted from the generator interconnection queue reform in 2008. Projects in this cycle have experienced delays emanating from the delays experienced by Group 5. The MISO restudies for the first DPP cycle will likely be completed in a few weeks.

A Notice of Comment Period on the petition for amendment was issued by EFP staff on August 8, 2011, and was distributed to all persons on the project mailing list. Included in the notice was information regarding amendment or revocation of the site permit under Minnesota Rule 7854.1300. Comments were accepted through August 22, 2011.

## **Regulatory Process and Procedures**

Under Minnesota Statutes section 216F.04(d) the Commission has the authority to deny, modify, suspend, or revoke a permit. The Commission's procedure for amending or revoking permits is identified in Minnesota Rule 7854.1300. Under subpart 2 of this rule, the Commission may amend a site permit at any time if the Commission has good cause to do so. Subpart 4 of this rule permits the Commission to initiate action to consider amendment or revocation of a site permit on its own initiative or upon the request of any person. This rule states that no site permit may be amended or revoked without first providing notice and affording due process to the permit holder.

Section III.K.3 of the site permit includes several circumstances under which the Commission may modify or amend the permit for cause. Section III.K.4 identifies circumstances under which the Commission may revoke or suspend the permit. If the Commission finds that any of the grounds for revocation or suspension are met, the Commission may require the Permittee to undertake corrective measures in lieu of having the permit suspended or revoked.

Under section III.J.4 of the site permit, the Permittee must advise the Commission of the reason why it has not obtained a PPA or other enforceable mechanism within two years of issuance of the permit and the Commission may determine whether the permit should be amended or revoked.

Under section III.K.2 of the site permit and Minnesota Rule 7854.1200, the Permittee must inform the Commission of the reason why construction has not commenced within two years of the issuance of the permit and the Commission may determine whether the permit should be revoked.

## **EFP Staff Analysis and Comments**

EFP staff received two comments from private citizens during the comment period; both are against amending the permit. Issues raised include: the comment period was too short; noise impacts; shadow flicker impacts; property value reduction; health problems; and high electricity costs. EFP staff addresses these issues below:

Comment Period: The comment period was open 14 days. Comment periods for LWECs site permit amendments typically run two weeks. While the wind rules do not specify a minimum comment period, a minimum of 10 days is required under rules for the Power Plant Siting Act.

Noise: Section III.E.3 of the site permit requires Bear Creek to demonstrate its project can meet the noise standard pursuant to Minnesota Rules chapter 7030, which is also required of recently issued permits. However, recent permits are generally requiring the Permittee to submit a proposal for the conduct of a noise study, which shall be carried out on approval by the Commission. Section III.F.2 of the site permit requires a noise study upon request of the Commission.

Shadow Flicker: Unlike recently issued site permits, Bear Creek's site permit does not require shadow flicker data regarding impacts to landowners and its efforts to minimize

impacts. Shadow flicker was neither raised nor addressed during the permitting process for the Bear Creek Wind Project. However, many other dockets have addressed the issue of shadow flicker. The State of Minnesota does not have a shadow flicker standard and site permits have not contained shadow flicker limits.

Health Concerns: Health concerns have been raised regarding noise and shadow flicker impacts in relation to wind facilities in general. Health concerns have been addressed in other dockets, which found a lack of conclusive scientific evidence that wind turbines cause adverse health effects. Noise and shadow flicker are also addressed above.

High Energy Costs: If a PPA is secured with a Minnesota public utility, as defined in Minnesota Statutes chapter 216B, a separate docket will address the issue of costs and impacts to ratepayers.

Property Values: Property values were addressed in the initial site permit process. EFP staff has also addressed the potential for reduced property values in other dockets. In summary, property value impact studies have not demonstrated a consistent relationship between property values and nearby wind projects.

EFP staff notes that Todd and Otter Tail counties each have an ordinance for wind energy conversion systems (WECS) under five MW. Neither county addresses LWECS nor have accepted delegation authority for projects under 25 MW. EFP staff did not receive any comments from these counties relating to county ordinances.

The site permit issued to Bear Creek does not contain a condition allowable under Minnesota Rule 7854.1100, subpart 3, which nullifies the permit if the permittee has not obtained a PPA or other enforceable mechanism by a certain date. As a result the site permit has not expired. Instead, the Commission may take action to amend or revoke the site permit.

The permittee has requested an amendment to allow an additional two years to obtain a PPA or other enforceable mechanism and commence construction. Granting the two-year extension would allow Bear Creek up to four years to obtain a PPA or other enforceable mechanism.

Glacial Ridge Wind Project, LLC (Glacial Ridge), Kenyon Wind, LLC (Kenyon Wind), Comfrey Wind Energy, LLC (Comfrey Wind), and Lakeswind Power Partners, LLC (Lakeswind) received extensions to obtain a PPA or some other enforceable mechanism and begin construction since the Commission has had the authority to issue permits. Permit extensions were granted for an additional two years. On October 21, 2010, Kenyon Wind requested that its permit be amended for a second time to allow additional time to obtain a PPA or other enforceable mechanism and to commence construction. The Commission denied Kenyon Wind's request for a second amendment for a second extension in an order dated December 23, 2010. Sibley Wind Substation LLC has a pending petition before the Commission requesting a two-year extension for its site permit milestones.

Bear Creek's request for its permit extension is based on similar reasoning as Glacial Ridge, Comfrey Wind, and Lakeswind – the MISO interconnection process has been very lengthy and uncertain. Bear Creek is the first wind developer to seek an extension based on delays experienced in the MISO queue process for projects that follow the Group 5 restudy efforts.

Projects, including Bear Creek's project, in the first DPP cycle have experienced restudy delays as a result of the Group 5 restudy delays. Bear Creek argues that unknown interconnection costs due to the lack of completed MISO studies are the primary reason it is been unable to secure a PPA.

EFP staff believes the Permittee's petition supports amending the site permit to extend the deadline by which the Permittee must obtain a PPA or other enforceable mechanism. Based on the information provided in the petition, forces beyond Bear Creek's control have introduced a level of uncertainty that make it difficult, if not impossible, to execute a PPA or other enforceable mechanism for offload of the energy from the project. Because the permit prohibits construction of the project without a PPA or other enforceable mechanism, it follows that if the Commission extends the time to allow the Permittee to secure a PPA or other enforceable mechanism, the Commission should also extend the time for Permittee to commence construction.

Minnesota Statutes section 216F.04 states that it is the policy of the state to "site LWECs in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources." Because rules require the permittee to advise the Commission if it fails to commence construction within two years, the Commission can revisit whether the project meets the policy goals of the state.

EFP staff does not believe the record supports revocation of the permit. Revocation of a permit for failure to commence construction must be undertaken in accordance with Minnesota Rule 7854.1300, subpart 4, which requires providing notice and affording due process to the permit holder. The Commission has provided notice and due process to the permit holder.

EFP staff prepared an amendment to reflect a two-year extension of the permit. The amendment also includes a minor change to clarify that the permit is issued to the Bear Creek entity as registered with the Office of the Minnesota Secretary of State (Bear Creek Wind Partners LLC). The attached amendment amends the cover page and sections I, II, III.J.4, III.K.2 and III.L of the site permit.

### **Commission Decision Options**

#### **A. Deny the Petition**

1. Deny the petition for amendment by Bear Creek Wind Partners LLC and revoke its Large Wind Energy Conversion System Site Permit.
2. Deny the petition for amendment by Bear Creek Wind Partners LLC and suspend its Large Wind Energy Conversion System Site Permit.
3. Make some other decision deemed more appropriate.

#### **B. Grant the Petition**

1. Grant the petition for amendment by Bear Creek Wind Partners LLC and amend its Large Wind Energy Conversion System Site Permit as provided in the attached Amendment.
2. Grant the petition for amendment by Bear Creek Wind Partners LLC and amend its Large Wind Energy Conversion System Site Permit as deemed appropriate.
3. Make some other decision deemed more appropriate.

EFP staff recommends option B1.

**STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION**

**PERMIT AMENDMENT**

**SITE PERMIT FOR CONSTRUCTION OF A LARGE WIND  
ENERGY CONVERSION SYSTEM  
IN**

**TODD AND OTTER TAIL COUNTIES, MINNESOTA**

**ISSUED TO  
BEAR CREEK WIND PARTNERS, LLC**

**DOCKET NO. IP-6629/WS-07-297**

In accordance with Minnesota Statutes Section 216F.04 and Minnesota Rules Chapter 7836~~54~~ this Site Permit is hereby issued to:

**BEAR CREEK WIND PARTNERS, LLC**

Bear Creek Wind Partners, LLC, is authorized to construct and operate up to a 47.5 Megawatt Large Wind Energy Conversion System on the site identified in this Site Permit and in compliance with the conditions contained in this Permit.

This permit will expire on: May 1, 203~~9~~41.

Approved and adopted this \_\_\_\_\_ day of ~~April, 2009~~  
September 2011  
BY ORDER OF THE COMMISSION

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Burl W. Haar,  
Executive Secretary

(S E A L)

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Permit Section I is amended as follows:

This site Permit for a Large Wind energy Conversion system (LWECS) authorizes Bear Creek Wind Partners, LLC, to construct up to 47.5 megawatt (MW) LWECS and associated facilities in Todd and Otter Tail counties, on a site of approximately 3,100 acres in accordance with the conditions contained in this Permit. The site boundary is shown on the maps that are attached hereto.

Permit Section II is amended as follows:

The up to 47.5 MW LWECS authorized to be constructed by this Site Permit will be owned and operated by Bear Creek Wind Partners, LLC (hereinafter "Permittee"). The Project will consist of 1.5 to 3.0 MW capacity wind turbines with a combined nominal nameplate capacity of no more than 47.5 MW. Associated facilities will include one permanent meteorological tower and wind turbine access roads. The wind turbines are to be interconnected by communication and electrical power collection facilities within the wind farm. These facilities will include junction boxes, transformers, overhead and underground collector and feeder lines that will deliver wind-generated power to the Bear Creek Wind Project substation. All of the proposed collection and feeder lines would connect to a new Project substation developed exclusively for the Bear Creek Wind Project located in Stowe Prairie Township Section 17 or 20. Electricity collected from the 34.5 kV collection system will be delivered to and stepped up to 115 kV at the Bear Creek Wind Project Substation.

Permit Section III.J.4 is amended as follows:

#### 4. POWER PURCHASE AGREEMENT

This 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 electricity to be generated by the Project. In the event the Permittee does not obtain a power purchase agreement or some other enforceable mechanism for sale of the electricity to be generated by the Project within two years of the issuance of this Permit Amendment, the Permittee must advise the Commission of the reason for not having such power purchase agreement or enforceable mechanism. In such event, the Commission may determine whether this Permit should be amended or revoked. No amendment or revocation of this Permit may be undertaken except in accordance with applicable statutes and rules, including Minnesota Statute 216F.05 and Minnesota Rule ~~7836.1300~~7854.1300.

Permit Section III.K.2 is amended as follows:

#### 2. FAILURE TO COMMENCE CONSTRUCTION

If the Permittee has not completed the pre-construction surveys required in paragraph III.D., and commenced construction of the LWECS within two years of the issuance of this Permit Amendment, the Permittee must advise the Commission of the reason construction has not commenced. In such event, the Commission may determine whether

this Permit should be revoked. No revocation of this Permit may be undertaken except in accordance with applicable statutes and rules, including Minnesota Statute section 216F.05 and Minnesota Rule ~~7836.1300~~7854.1300.

Permit Section III.L is amended as follows:

This Permit shall expire on May 1, ~~2039~~2041.