MINNESOTA DEPARTMENT OF
COMMERCE

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July 6, 2015

Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: Petition for Site Permit Amendment or Revocation
31.5 MW Comfrey LWECS Project
Docket No. IP6630/WS-07-318

Dear Mr. Wolf:

Attached are the comments and recommendations of the Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) staff in the following matter:

In the Matter of Comfrey Wind, LLC's Site Permit for a 31.5 MW Large Wind Energy Conversion System in Brown and Cottonwood Counties

A site permit for the 31.5 MW LWECS Site Permit was issued by the Commission on January 15, 2008. The permit was amended in 2011 and 2013. A petition to amend the site permit was filed on June 16, 2015 by:

Peter J. Samuelson, President
Comfrey Wind Energy, LLC
58307 County Road 17
Comfrey, MN 56019

EERA staff recommends that the Commission revoke Comfrey Wind Energy's Site Permit for the 31.5 MW Project. Staff is available to answer any questions the Commission may have.

Sincerely,

Suzanne Steinhauer

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Environmental Review Manager
Energy Environmental Review and Analysis
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MINNESOTA DEPARTMENT OF COMMERCE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS AND RECOMMENDATIONS OF THE MINNESOTA DEPARTMENT OF COMMERCE ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS

DOCKET NO. IP6630/WS-07-318

Date.....July 6, 2015
EERA Staff: Suzanne Steinhauer .....(651)539-1843

Issues Addressed: Petition for Site Permit Amendment or Revocation

Additional documents and information can be found on http://mn.gov/commerce/energyfacilities/Docket.html?Id=19254 or on eDockets http://www.edockets.state.mn.us/EFilin/search.jsp (07-318).

Attachments:
RedWindConsulting, LLC, *31.5 MW – PTC Qualified Wind Asset*

This document can be made available in alternative formats; i.e. large print or audio tape by calling (651) 539-1530.

Introduction and Background

On January 15, 2008, The Minnesota Public Utilities Commission (Commission) issued a site permit to Comfrey Wind Energy, LLC (CWE) to construct the 31.5 Megawatt Comfrey Wind Large Wind Energy Conversion System (LWECS) Project (Project) in Brown and Cottonwood counties.[1] On March 11, 2011, and May 9, 2013, the Commission authorized Comfrey Wind Energy, LLC two year extensions to commence construction and to obtain a power purchase agreement or other enforceable mechanism for the sale of electricity generated from the Project.[2] The 2013 Order significantly revised the site permit to make it more consistent with other permits issued in early 2013.

On June 16, 2015, CWE requested that the Site Permit be amended to extend the deadlines for obtaining a power purchase agreement or other enforceable mechanism for the sale of

[1] Minnesota Public Utilities Commission, *Order Issuing Site Permit*, January 15, 2008, eDocket ID: 4897797
[2] Minnesota Public Utilities Commission, *Order Amending Site Permit*, March 11, 2011. eDocket ID: 20113-60293-01; Minnesota Public Utilities Commission, *Order Amending Site Permit*, May 9, 2013, eDocket Document ID: 20135-86848-01.

electricity generated from the project and begin construction of the Project for an additional 19 months, until December 31, 2016.[3]

Regulatory Process and Procedures

Siting of Large Wind Energy Conversion Systems is governed by Minnesota Statutes, Chapter 216F. Minnesota Statutes 216F.03 states:

> *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 Rule, part 7854.1000, subpart 1, directs the Commission to make a final site permit decision based on the record that has been compiled in the matter. Minnesota Rule, part 7854.1000, subpart 3, requires that the Commission determine that:

> *...the project is compatible with environmental preservation, sustainable development, and the efficient use or resources, and the applicant has complied with this chapter.*

Minnesota Statutes, Chapter 216F.04(d) authorizes the Commission to condition, modify, or revoke a permit:

> *(d) The commission may place conditions in a permit and may deny, modify, suspend, or revoke a permit.*

Minnesota Rule, part 7854.1300, subpart 2, states that:

> *The Commission may amend a site permit for an LWECS at any time if the commission has good cause to do so.*

Minnesota Rule, part 7854.1300, subpart 3, states that:

> *The Commission may revoke a site permit for an LWECS at any time if the commission determines that any of the following has occurred:*
>
> *A. The applicant knowingly made a false statement in the application of in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the commission's findings;*
>
> *B. The applicant has failed to comply with a material condition or term of the permit;*
>
> *C. The permitted LWECS endangers human health or the environment and the danger cannot be resolved by modifications of the permit or LWECS; or*
>
> *D. The permittee has violated other laws that reflect an inability of the permittee to comply with the permit.*

[3] CWE, *Petition to Amend Site Permit*, June 16, 2015, eDocket Document ID: 20156-111472-01

EERA Staff Analysis and Comments

Department of Commerce Energy Environmental Review and Analysis (EERA) staff reviewed CWE's most recent petition to amend the site permit and the record in this matter.

The permit was issued more than seven years ago, and has been amended twice to allow for more time to obtain a Power Purchase Agreement (PPA) or other enforceable mechanism and commence construction. In its petition, CWE argues that the Project has been unable to obtain a PPA and begin a construction since the 2013 amendment due to a shortage of capital and uncertainty about renewal of the federal production tax credit (PTC). CWE further argues that, after a slow start in the 2008-2014 timeframe, it is now better-positioned to continue with the development activities necessary to complete the Project.

CWE's principal argument is that factors beyond its control have precluded development of the Project. Based on CWE's petition, since at least the 2013 amendment these factors appear to be almost entirely related to CWE's inability to access sufficient capital to continue with the development activities necessary to move the Project forward. In a review of LWECS dockets, EERA staff identified more than 1,400 MW of wind generation that has been installed and placed in operation in Minnesota since the CWE permit was originally issued in January 2008.

Because the Commission found in its initial permit decision that the proposed project is compatible with environmental preservation, sustainable development and the efficient use of resources, it would appear that any permit amendment should also meet those standards. To that end, EERA staff focused its analysis on three areas:

- Project changes that would substantially change the findings accompanying the Commission's original permit decision, and potentially change the Commission's determination that the project is compatible with the standards set out in Statute and Rule;
- Compliance with existing site permit terms and conditions; and
- Potential permit amendments not requested by the applicant, but consistent with more recently issued permits.

Project Changes that Potentially Affecting the Commission's Findings

The CWE petition does not identify any changes to the Project, and EERA finds no indication of any changes to the Project from what was proposed in the original application submitted in 2007. Section 3 of the Permit requires the Permittee to comply with the practices set forth in its 2007 application and the record of the proceeding.

The Project Description in Section 1 of the Permit anticipates the use of up to 17 turbines in the 1.8 to 2.4 MW size range. CWE's petition did not request a change in turbine and indicates that the turbine model has not been finalized. However, EERA staff notes that one of the three turbine models evaluated in the 2014 *Wind Resource Assessment* filed as an

attachment to CWE's June 16, 2015, petition, a 1.7 MW GE103-1700 turbine, is outside of the size range identified in the Permit.[4]

While the petition does not identify any changes to the Project, EERA staff notes that the information on the Project is generally based on material filed in CWE's 2007 LWECS Site Permit Application.[5] With the exception of an updated Natural Heritage Information System (NHIS) records search submitted in support of the 2013 amendment request, virtually all of the information about the design, construction, and operation of the Project is based on material filed in CWE's 2007application. However, the turbine model anticipated in the application, the Suzlon S88, was not one of the turbine models evaluated in the 2014 *Wind Resource Assessment* filed with CWE's petition.

Compared to recent applications, the 2007 application provides scant detail in the description of the potential Project impacts and does not meet the minimum standards identified in *Application Guidance for Site Permitting of Large Wind Energy Conversion Systems in Minnesota*.[6] EERA staff uses the *Application Guidance for Site Permitting of Large Wind Energy Conversion Systems in Minnesota* in developing its recommendations on application completeness.

In comments to the Commission responding to Comfrey's 2013 request for a permit amendment, EERA (at that time Energy Facility Permitting or EFP) requested that CWE provide updated environmental information. In its response to these comments, CWE noted that the Project layout had not changed since the 2008 permit and argued that it would provide updated environmental information once a turbine was selected and an updated layout was developed.[7] There is still no turbine selected and there is no recent environmental, noise or archaeological information filed in the docket. CWE's May 8, 2015, notification that it would be filing an amendment request was its first filing in the docket since March 2013.

Compliance with Existing Site Permit Terms and Conditions

EERA staff note that CWE appears to be in violation of permit terms related to the commencement of construction and required notification of landowners.

Commencement of Construction

Section 5.5 of the Permit requires that a pre-construction meeting be held prior to the start of any construction. Prior to the pre-construction meeting, the permittee must file a number of documents demonstrating that the Project will be constructed and operated consistent with the LWECS site permit issued by the Commission. There has been no pre-construction meeting held for the Project and none of the preconstruction filings required in Sections 4.7, 5.1, 5.4, 5.8, 6.1, 6.2, 6.3, 6.4, 6.5, 6.7, 7.8, 7.11, 7,16, or 10.1, have been filed.

[4] Nayxa Energy Services, *Comfrey Wind Farm - Wind Resource Assessment.* 2014. Filed June 16, 2015, by CWE, eDockets Document ID: 20156-111484-02
[5] CWE, *LWECS Site Permit Application,* July 20, 2007, eDockets Document ID: 4736952
[6] Department of Commerce, Energy Environmental Review and Analysis, *Application Guidance for Site Permitting of Large Wind Energy Conversion Systems in Minnesota*. August 2010, http://mn.gov/commerce/energyfacilities/documents/LWECS_APP_Guide_AUG2010.pdf
[7] CWE, *Reply Comments*, February 11, 2013, eDockets Document ID: 20132-83716-01

However, a summary of an investment opportunity that appears to be the Project, a 31.5 MW wind project in Brown and Cottonwood counties, on the RedWind website and included as an Attachment to this document, describes the 31.5 MW facility as meeting the PTC qualification of having "Work of a significant physical nature started," and includes a photograph of a bulldozer in a field date-stamped December 17, 2014.[8]

Notification of Landowners
Section 13.2 of the amended permit issued by the Commission in its May 9, 2013, Order, requires CWE to send a letter to landowners summarizing changes from previously issued permits, along with a copy of the most recent permit. The letter is to be reviewed and approved by Commission staff prior to distribution. EERA staff is unable to find a record in the docket indicating that this term of the permit was fulfilled.

Consistency with Recently Issued Permits

The Commission's 2013 permit amendment updated the 2008 permit to make it more consistent with permits issued by the Commission in the late 2012 and 2013 timeframe.

The existing permit is generally consistent with the most recently issued LWECS permit for the Odell Wind Farm.

Should the Commission choose to amend the permit, EERA staff recommends that the amended Permit include the following modifications:

1. References to "Department of Commerce State Permit Manager" in Sections 5.6 and 5.7 of the Permit should be changed to "Department of Commerce Environmental Review Manager."

2. The language on permit transfer in Section 11.5 of the Permit should be replaced with the more precise language used in Section 11.5 of the Odell Site Permit:

   11.5 Transfer of Permit and Notice of Ownership
   The Permittee may not transfer this permit without the approval of the Commission. If the Permittee desires to transfer this permit, the holder shall advise the Commission in writing of such desire. The Permittee shall provide the Commission with such information about the transfer as the Commission requires in order to reach a decision. The Commission may impose additional conditions on any new Permittee as part of the approval of the transfer.

   Within 20 days after the date of the notice provided in Section 8.4, the Permittee shall file a notice describing its ownership structure, identifying, as applicable:
   a) the owner(s) of the financial and governance interests of the Permittee;
   b) the owner(s) of the majority financial and governance interests of the Permittee's owners; and
   c) the Permittee's ultimate parent entity (meaning the entity which is not controlled by any other entity).

[8] RedWind Consulting, LLC, *31.5 MW PTC Qualified Asset*, http://redwindconsulting.com/images/pdfs/opportunities/RedWind_-_32MW_PTC_Qualified_Wind_Asset.pdf

The Permittee shall notify the Commission of:

(a) A change in owner(s) of the majority financial or governance interests in the Permittee;*

(b) A change in owner(s) of the majority interest financial or governance interests of the Permittee's owners, or,*

(c) A sale which changes the parent entity of the Permittee.

** When there are only co-equal 50/50 percent interests, any change shall be considered a change in majority interest.*

The Permittee shall notify the Commission of:

(a) The sale of a parent entity or a majority interest in the Permittee,

(b) The sale of a majority interest of the Permittee's owners or majority interest of the owners, or,

(c) A sale which changes the entity with ultimate control over the Permittee.

3. The Permit should require at least one year of post-construction avian and bat fatality monitoring, consistent with the Minnesota Department of Natural Resources recommendation in its June 26, 2015, letter.

Commerce EERA Conclusions and Recommendations

EERA staff recommends that the Commission revoke CWE's site permit for the Project, as it appears that CWE has violated at least two material conditions or terms of the permit by commencing construction without notifying the Commission and by failing to notify landowners of the revised permit.

In addition to what appear to be violations of the permit terms noted above, EERA staff notes that the information available on the Project is, in most cases, nearly eight years old and is not consistent with the level and specificity of information expected of more recent applicants for LWECS site permits.

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31.5MW - PTC Qualified Wind Asset

Deal Structure: Partner for Development Capital – Seeking ~$500K

Location: Brown and Cottonwood Counties in Minnesota

Current Owner:

1. Midwestern Limited Liability Company
2. Eleven members

Project Site:

1. The project landscape consists of open cropland characterized by agricultural fields and farmsteads
2. Nine Lease Agreements, ~3,940 acres
3. Leases will expire in Q1 of 2017

Wind Resource:

1. ~7.8m/s at 80m based upon third party wind assessment report
2. 3 years of high quality wind data used in study
3. 46.98% tied to GE-103, 1.7MW WTG, net of 16.5% loss factor
4. 46.77% tied to V-110, 2.0MW WTG, net of 14.95% loss factor
5. Wind appears uniform throughout day and night
6. Wind rose is south by southwest and north by northwest
7. 80m met mast recording data
8. ATT met mast with NRG loggers

Interconnection:

1. Project can enter the next MISO Definitive Planning Phase ("DPP") at its discretion; next cycle is February 2015
2. ~$262K for both the M2 milestone and D3 study deposit upon entry via cash or letter of credit, due January 2, 2015 for February cycle

Permitting:

1. MN Site Permit secure
2. Microwave Path impact complete by Comsearch
3. Cottonwood and Brown County Commissioners are supportive of Project via Resolutions passed
4. FAA Determinations of No Hazard need to be re-secured
5. Typical and customary ad ministerial permits will be required upon construction being imminent
6. Exempt Wholesale Generator status with FERC needs to be filed

Environmental:

1. The Project **may** need to conduct pre-construction avian, biological and bat monitoring if it seeks yet another extension of the Site Permit

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2. Archeological desktop study will be required, and **potentially** field studies
3. The Project will need to obtain the following permits as they relate to environmental aspects:
   a. DNR License to Cross Public Lands
   b. DNR Public Waters Work Permit
   c. Wetland Conservation Act Compliance

Off-taker: Given Community Based Energy Development ("C-BED") designation, size, and recent EPA emission draft rules we believe there should be quite a bit of interest in Project from off-takers within MN

1. Power pricing given wind regime, is very attractive to potential off-takers

Targeted COD: 12/31/16

Incentives:
1. Federal Production Tax Credit
2. No sales tax
3. 100% exempt from property taxes

WTGs: Flexible

Construction: Flexible

PTC Qualification: Work of a significant physical nature started

Developer Ask: Development Budget **available upon request**

Transaction Structure: Flexible – **to be discussed**