



Energy Facility Permitting
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February 4, 2013

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

RE: Comments and Recommendations of the Department of Commerce Energy Facility Permitting Staff
Docket No. IP-6630/WS-07-318

Dear Dr. Haar:

Attached please find the initial comments of the Department of Commerce Energy Facility Permitting (EFP) staff in the following matter:

Site Permit of Comfrey Wind Energy, LLC for a Large Wind Energy Conversion System

The petition to amend the Comfrey Wind Energy LLC LWECS site permit was filed on January 15, 2013. The petitioner is:

John R. Gasele
Fryberger, Buchanan, Smith & Frederick, P.A.
332 Minnesota Street, Suite West 1260
St. Paul, MN 55101

The permittee identified on the LWECS Site Permit is:

Peter Samuelson
58307 County Road 17
Comfrey MN 56019
USA

EFP staff has prepared comments replying to the Commission's notice of comment period on the petition for amendment and is available to answer any questions the Commission may have.

Sincerely,

A handwritten signature in black ink that reads "Suzanne Lamb Steinhauer". The signature is written in a cursive, flowing style.

Suzanne Lamb Steinhauer
Energy Facility Permitting

Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. IP-6630/WS-07-318

EFP Staff: Suzanne Lamb Steinhauer.....651-296-2888

In the Matter of the Site Permit of Comfrey Wind Energy, LLC for a Large Wind Energy Conversion System

Issues Addressed: The following are the Department of Commerce, Energy Facility Permitting (EFP) staff's comments on Comfrey Wind Energy, LLC's petition for a permit amendment dated January 15, 2013.

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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

2011 Amendment

On January 14, 2011, the Commission received a petition from CWE to amend its site permit by extending both the time in which to obtain a Power Purchase Agreement or some other enforceable mechanism for sale of the electricity and the deadline to begin construction to January 15, 2013.² The Commission amended the site permit in its order dated March 11, 2011.³

¹ Minnesota Public Utilities Commission Order, January 15, 2008, eDocket ID: [4897797](#)

² Comfrey Wind Energy, LLC, *Petition to Amend the Comfrey Wind Energy LWECS Site Permit*, January 14, 2011. eDocket ID: [20111-58557-01](#)

³ Minnesota Public Utilities Commission Order, March 11, 2011. eDocket ID: [20113-60293-01](#)

2012 Amendment Request

On April 26, 2012, CWE filed a petition to amend the site permit for the Comfrey Wind Project.⁴ In that petition CWE requested that the existing permit be amended to allow CWE to use a different size turbine than allowed for in the permit, resulting in a smaller overall project size. On June 20, 2012, CWE filed a request to table consideration of the petition.⁵ The Commission took no action on the petition at its June 21, 2012, meeting.⁶

2013 Amendment Request

On January 15, 2013, CWE filed a petition to amend the site permit by extending deadlines to obtain a power purchase agreement and commence construction by an additional two years.

Regulatory Process and Procedures

Siting of Large Wind Energy Conversion Systems are governed by Minnesota Statutes, §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 Rules, 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 Rules, 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."

EFP Staff Analysis and Comments

Commission's notice requested comments on whether the Commission should amend CWE's site permit and authorize CWE an additional two years to commence construction and to obtain a power purchase agreement or other enforceable mechanism.

⁴ Comfrey Wind Energy, LLC, *Petition to Amend the Comfrey Wind Energy, LLC LWECS Site Permit*, April 26, 2012. eDocket ID: [20124-74025-02](#)

⁵ CWE, *Request to Table Consideration of Petition to Amend the Comfrey Wind Energy LLC Site Permit*, June 20, 2012. eDocket ID: [20126-75866-01](#)

⁶ Commission, *Minutes, June 21, 2012 Agenda*, August 6, 2012. eDocket ID: [20128-77581-05](#)

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, EFP 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

The 2013 petition requests that the Commission amend the existing LWECS site permit to extend deadlines for obtaining a power purchase agreement and commencing construction and does not identify any changes to the Project.

The 2012 petition, however, requested a permit amendment to allow for use of up to 17 1.5 MW Sinovel turbines, a change from the original permit that allowed up to 17 turbines in the 1.8 to 2.4 MW range. CWE maintained in that filing that without the requested permit amendment, it will lose the ability to complete development of the Project. In its May 2012 comments, EFP staff noted that information on the wildlife and rare and unique natural resources was out of date, making it difficult for EFP staff to comment on potential impacts to wildlife or rare or unique natural resources and recommended that CWE file natural resource information prior to the Commission's decision.⁷ Commission staff concurred with EFP staff recommendation and recommended that CWE file that information.⁸ EFP staff could find no evidence that CWE has filed this information and recommends that CWE file updated natural resource information prior to the Commission's decision on the requested permit amendment.

The 2013 petition does not specify whether CWE is seeking a change in turbine types, or intends to use turbines in the 1.8 to 2.4 MW range specified in the permit. Until that information is clarified, EFP staff finds it difficult to assess impacts of the Project on the human and natural environment.

Compliance with Existing Site Permit Terms and Conditions

CWE's 2013 petition seeks to bring it back into compliance with permit conditions III.J.4 and III.K.2. EFP staff comments on the 2012 petition identified issues with the company's LLC

⁷ DOC EFP Staff, *Comments on Comfrey Wind Energy LLC's Second Petition for a Permit Amendment Dated April 26, 2012, May 21, 2012*. eDocket ID: [20125-74865-01](#); DOC EFP Staff, *Reply Comments on Comfrey Wind Energy, LLC's Second Petition for a Permit Amendment Dated April 26, 2012, May 31, 2012*. eDocket ID: [20125-75184-01](#)

⁸ Commission Staff, *Staff Briefing Paper In the Matter of Comfrey Wind Energy, LLC's Site Permit for a 31.5 Megawatt Large Wind Energy Conversion System in Brown and Cottonwood Counties*, June 14, 2012. eDocket ID: [20126-75610-01](#)

standing. A compliance review of the Project file asked CWE to provide evidence of compliance with permit condition III.K.9.⁹

LLC Standing

CWE originally filed with the Minnesota Secretary of State's Office as a Limited Liability Company in 2006. EFP staff noted that, as of May 2012, a search of the Secretary of State's Business Filings website indicated that CWE was overdue for its annual renewal as a LLC. A recent review of the Secretary of State's Business Filings website shows that CWE has renewed its status as a registered LLC.

III.J.4, Power Purchase Agreement

CWE proposes amending section III.J.4 of the site permit to extend the time frame in which to obtain a PPA or some other enforceable mechanism for the sale of electricity until January 15, 2015, or seven years from date of the original permit issuance.

CWE argues that significant delays in the Midwest Independent System Operator (MISO) interconnection process resulted in uncertainty of interconnection costs that were not finalized until May 2012. CWE argues that, because of the delays and uncertainty of transmission costs allocated to the Project, it has been unable to submit an accurate bid in response to proposals for wind generation.

III.K.2, Failure to Commence Construction

CWE proposes amending section III.K.2 of the site permit to extend the time frame in which to commence construction until January 15, 2015, or seven years from date of the original permit issuance.

CWE argues that because construction cannot begin without a PPA, the requirement to commence construction should be extended for the same reasons it needs an extension to obtain a PPA. CWE further argues that the uncertainty created by the MISO study process has prevented it from moving ahead with other development work including securing turbines, securing financing, and obtaining construction-related permits.

III.K.9, Notice to Local Residents

Permit Condition III.K.2 requires the permittee to provide a copy of the permit within 10 days of the permit issuance to local governmental representatives and to local residents within 30 days of issuance. CWE filed an affidavit on January 15, 2013, certifying that the permit was provided to local officials and landowners on January 24, 2008.¹⁰

Consistency with Recently Issued Permits

Since the issuance of the original permit in January 2008, the Commission has made several changes to LWECs permits to clarify filing, complaint and reporting requirements. EFP staff comments from May 2012 recommended certain additional changes to bring the permit more into line with current permits. As the Commission took no action on the 2012 petition, the

⁹ DOC EFP Staff, *Annual Compliance Review of Comfrey Wind Project*, October 29, 2012. eDocket ID: [201210-80003-01](#)

¹⁰ Fryberger, Buchanan, Smith & Frederick, *Compliance Filing: Notice to Landowners and Government Units*. January 15, 2013. eDocket ID: [20131-82771-01](#)

permit has not changed from the 2008 version except for the new issue date and new map provided in the Commission's March 11, 2011 order.

EFP staff recommends that the Commission issue an additional comment period once CWE has provided information on the Project description and updated natural resource information. EFP staff believes it would be appropriate to review the additional information before providing an updated permit highlighting changes that would make it more consistent with recently issued permits.

EFP Staff Recommendations

EFP staff recommends that the Commission:

1. Request CWE file additional information clarifying the size of the project, anticipated turbine size and operating information, and anticipated project layout prior to making a final decision on the amendment request.
2. Request that CWE file updated natural resource information prior to making a final decision on the amendment request. Updated search results from the DNR's Natural History Information Service database would provide at least a minimum level of information on any rare and unique natural resources in the area.
3. Provide for an additional comment period on the permit amendment request following filing of the updated project and natural resource information.