

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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In the Matter of Comfrey Wind Energy, LLC's
Application for a Large Wind Energy
Conversion System Site Permit for the
31.5 MW Comfrey Wind Project

ISSUE DATE: October 6, 2015

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

ORDER REVOKING SITE PERMIT

PROCEDURAL HISTORY

On January 15, 2008, the Commission issued a site permit to Comfrey Wind Energy, LLC (Comfrey or the Company) for a 31.5 megawatt (MW) wind farm in Brown and Cottonwood counties.

The site permit required Comfrey to either obtain a power purchase agreement—or other legally enforceable mechanism for selling the project's electricity—within three years of the date the permit was issued or advise the Commission of the reason for failing to do so.¹ The permit imposed the same requirement for beginning construction of the wind farm.²

On January 14, 2011, Comfrey filed a petition to amend the site permit to extend by two years the deadlines for obtaining a power purchase agreement and beginning construction. The Company stated that delays in the power grid interconnection process had prevented it from executing a power purchase agreement or beginning construction.

On March 11, 2011, the Commission granted Comfrey's petition, amending the permit to allow the Company two more years to obtain a power purchase agreement and begin construction of the wind farm (First Amended Permit).

On January 15, 2013, Comfrey filed a second petition for a two-year extension of the power-purchase-agreement and construction deadlines in its site permit. Comfrey stated that continuing interconnection delays and uncertainty over whether Congress would extend the production tax credit had, until recently, made it impossible for the Company to move forward with developing the wind farm.

On May 9, 2013, the Commission amended Comfrey's permit to allow the Company another two years to meet the power-purchase-agreement and construction deadlines in its permit (Second Amended Permit).

¹ Original Site Permit § III.J.4.

² Original Site Permit § III.K.2.

On June 16, 2015, Comfrey filed a petition for a 19-month extension of the power-purchase-agreement and construction deadlines. Comfrey stated that a lack of development capital and uncertainty over whether Congress would renew the production tax credit in 2014 had prevented the Company from completing the project.

On July 6, 2015, the Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) filed comments recommending that the Commission revoke Comfrey's site permit.

EERA maintained that Comfrey had violated at least two material terms of its permit: (1) the requirement that the Company hold a preconstruction meeting with EERA and (2) the requirement that the Company notify landowners of changes to its permit made as part of the 2013 amendment. EERA also argued that the documentation supporting the Company's original permit application was outdated and lacked the level of detail that would be expected in a wind-farm permit application filed today.

On July 14, Comfrey filed reply comments. It asserted that landowners had been notified of the 2013 permit changes but acknowledged that it had failed to meet with EERA before beginning construction in December 2014. Comfrey asserted that the construction done to date was *de minimis* and needed to be completed quickly to secure favorable tax treatment.

On August 27, 2015, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

Minnesota Statutes section 216F.04 authorizes the Commission to issue, amend, and revoke wind-farm site permits. Under Commission rules, the Commission may amend a wind-farm site permit if there is good cause to do so.³ The Commission may revoke a permit if it determines that the permittee has failed to comply with a material condition or term of the permit.⁴

The Commission concurs with EERA that Comfrey's site permit should be revoked because Comfrey has violated a material term of the permit. The permit requires that Comfrey participate in a preconstruction meeting with the EERA "to review pre-construction filing requirements, scheduling, and to coordinate monitoring of construction and site restoration activities" and file a summary of the meeting within 14 days.⁵ This requirement is material—it is designed to ensure meaningful regulatory oversight of construction and site-restoration activities.

Comfrey acknowledged that it began construction in December 2014 without holding a preconstruction meeting but asserted that only *de minimis* construction took place. However, the site permit does not distinguish between different levels of construction; it requires a meeting "[p]rior to the start of *any* construction."⁶ Accordingly, Comfrey has violated a material term of its permit, and revocation is appropriate.

³ Minn. R. 7854.1300, subp. 2.

⁴ *Id.*, subp. 3.

⁵ Second Amended Permit § 5.6.

⁶ *Id.* (emphasis added).

Even if Comfrey had not violated a material term of its site permit, the Company has yet to secure a purchaser for the wind farm's power and would need the Commission to extend the deadline for obtaining a power purchase agreement. But Comfrey has failed to demonstrate that there is good cause to amend the permit.

Comfrey identified two primary obstacles that prevented it from completing the project after obtaining its Second Amended Permit: (1) a shortage of development capital in 2013 and the first quarter of 2014 and (2) uncertainty over whether Congress would renew the production tax credit in 2014.

Comfrey stated that it had since raised enough capital to continue environmental and permitting work. However, the Company has not secured the financing necessary to complete construction. Comfrey attached a letter of support from a potential financier, but as that letter states, financing would be contingent on the Company obtaining a power purchase agreement from a creditworthy counterparty. And it is not clear that Comfrey is any closer to obtaining a power purchase agreement now than it was in 2013.

In sum, the Commission is not convinced that Comfrey is in a materially better position to bring the project to fruition now than it was when it obtained the Second Amended Permit more than two years ago. For the foregoing reasons, the Commission will deny Comfrey's request for a permit amendment and will revoke the Company's site permit.

ORDER

1. The Commission hereby revokes Comfrey's site permit.
2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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