Energy Facility Permitting
85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
ph 651.296.4026 | fx 651.297.7891
www.energyfacilities.puc.state.mn.us

May 18, 2011

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-6850/WS-07-1073

Dear Dr. Haar:

Attached are the Comments and Recommendations of the Energy Facility Permitting Staff in the following matter:

In the Matter of the Site Permit of Glacial Ridge Wind, LLC for a 20 Megawatt Large Wind Energy Conversion System in Pope County.

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,

Ingrid Bjorklund
EFP Staff

Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. IP-6650/WS-07-1073

Meeting Date: May 26, 2011……..Agenda Item # 2

Company: **Glacial Ridge Wind, LLC**

Docket No. **IP-6650/WS-07-1073**

In the Matter of the Site Permit of Glacial Ridge Wind, LLC for a 20 Megawatt Large Wind Energy Conversion System in Pope County

Issue(s): Should the Commission amend the site permit per Glacial Ridge Wind, LLC's petition?

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

Relevant Documents

Petition for Amendment to Site Permit…….....March 31, 2011
Public Comments.....May 9, 2011
Order Issuing a Site Permit for Glacial Ridge Wind, LLC…….....April 27, 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.

This document can be made available in alternative formats (i.e., large print or audio) by calling 651-296-0391 (voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1-800-627-3529 or by dialing 711.

Documents Attached

1. Proposed Amendment

See eDocket filings (07-1073) at https://www.edockets.state.mn.us/EFiling/search.jsp, or the Commission website at: http://energyfacilities.puc.state.mn.us/Docket.html?Id=19288 for project related documents.

Statement of the Issues

Should the Commission amend the site permit per Glacial Ridge Wind, LLC's petition?

Introduction and Background

The Minnesota Public Utilities Commission (Commission) issued a site permit to Glacial Ridge Wind, LLC (Glacial Ridge or Permittee) to construct a 20 megawatt (MW) Large Wind Energy Conversion System (LWECS) in Pope County on April 27, 2009, pursuant to Minnesota Rules chapter 7836 (renumbered to 7854).

Under section III.J.4 of the site permit, Glacial Ridge 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, Glacial Ridge 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 March 31, 2011, the Commission received a request from Glacial Ridge 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 April 27, 2013. Glacial Ridge argues that the delay for a PPA is due to significant delays in the Midwest Independent Transmission System Operator (MISO) interconnection process. The project was assigned to Study Group Five, which experienced delays and re-studies.

A Notice of Comment Period on the petition for amendment was issued by EFP staff on April 8, 2011, and was distributed to all persons on the project mailing list. Comments were accepted through April 25, 2011.

Regulatory Process and Procedures

Under Minnesota Statute section 216F.04(d) the Commission has the authority to 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 identifies the circumstances under which the Commission may modify or amend the permit. Section III.K.4 identifies the 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, 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 three comments from private citizens during the comment period. All three commenters are against amending the permit. Among the issues raised by the commenters are: the developer has had ample time to secure a commitment for sale of electricity and commence construction; the wind project would diminish enjoyment of the area due to noise and altered visual landscape; and property values would decrease without compensation. EFP staff notes that these issues raised here were also raised and addressed during the initial siting process with the exception of the timeline to achieve permit milestones.

> Visual: The Commission considered visual values in its findings at the time of permit issuance for this project and found that visual impacts resulting from wind projects are highly subjective; however, the erection of eight wind turbines will affect the appearance of the area. Uniform turbines with tubular towers will help mitigate the visual impact.
>
> Property Values: Property value impact studies have not demonstrated a consistent relationship between property values and nearby wind projects.
>
> Noise: Section III.E.3 of the site permit requires Glacial Ridge 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.
>
> Timeframe to Achieve Permit Milestones: Permit sections III.J.4 and III.K.2 require the Permittee to advise the Commission of the reasons it has not obtained a PPA and commenced construction, allowing the Commission to determine whether the permit should be amended or revoked. The Permittee has notified the Commission of the

> reasons why it is unable to comply with these permit conditions and has requested that these conditions be amended; thereby bringing Glacial Ridge back into compliance with the conditions of the permit.

Unlike Glacial Ridge's site permit, some permits issued by the Commission in the past have contained 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. The site permit issued to Glacial Ridge does not have such a condition, so the permit has not expired.

Minnesota Rule 7854.1200 requires the permittee to advise the Commission of the reasons construction has not commenced if construction has not commenced within two years after issuance of the site permit. The rule further states that the Commission may determine whether the permit should be revoked. Minnesota Rule 7854.1300, subpart 4, and sections III.K.3 and III.K.4 of the permit outline the procedures for amendment or revocation of a 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 Glacial Ridge up to four years to obtain a PPA or other enforceable mechanism.

To the knowledge of EFP staff, only Kenyon Wind, LLC (Kenyon Wind) and Comfrey Wind Energy, LLC (Comfrey Wind) have received extensions to obtain a PPA or some other enforceable mechanism and begin construction since the Commission has had the authority to issue permits. The Commission, in an order dated February 18, 2009, amended Kenyon Wind's permit to allow for an additional two years, thereby allowing Kenyon Wind approximately three and one-half years to obtain a PPA or other enforceable mechanism. On October 21, 2010, Kenyon Wind requested that the permit be amended to allow additional time for the permittee to obtain a PPA or other enforceable mechanism and to commence construction. The Commission denied Kenyon Wind's request for a second amendment in an order dated December 23, 2010. In an order dated March 11, 2011, the Commission granted Comfrey Wind a two-year extension, which allowed Comfrey Wind up to five years to obtain a PPA or other enforceable mechanism.

Glacial Ridge's request for its permit extension is based on similar reasoning as Comfrey Wind's reasoning; both argue that the MISO interconnection process has been very lengthy and uncertain. Like Comfrey Wind, Glacial Ridge was assigned to Study Group 5 in the MISO interconnection process. In October 2009, the Federal Energy Regulatory Commission (FERC) ordered that MISO's recommendation to allocate the entire cost of the Brookings line to wind projects in Study Group 5 was unsupported by the evidence. As a result of FERC's order, and a subsequent order dated May 20, 2010, MISO has initiated a restudy of the Group 5 interconnection requests. Glacial Ridge states that Group 5 restudy results should provide a path to interconnection and those restudy results are expected in the spring of 2011. Glacial Ridge argues that because of the financial uncertainties with the MISO Group 5 study process, it has been unable to effectively bid in response to the request for proposals (RFPs) issued over the past two years by various utilities.

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 Glacial Ridge'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, the permit should also extend the time for Permittee to commence construction.

EFP staff prepared an amendment to reflect a two-year extension of the permit. The attached amendment amends the cover page and sections III.J.4, III.K.2 and III.L of the site permit. EFP staff notes the entity name was changed to Glacial Ridge Wind, LLC during the siting process, but Glacial Ridge Wind, LLC is not a registered entity with the Minnesota Secretary of State. The permit application used Glacial Ridge Wind Project LLC as the company's legal name, which is the registered entity. EFP staff recommends issuing the permit to the registered entity. The Permittee is looking into the matter, which may result in a supplement to these comments and recommendations.

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 notes that Pope County has an ordinance for wind energy conversion system (WECS) under five MW that was adopted in June 2007 and amended in March 2010. Pope County's ordinance does not address LWECS and the county has not accepted delegation authority for projects under 25 MW. The county requires certain setbacks for commercial WECS that are more stringent than the permit, such as: a minimum setback of 750 feet from residences (other than the applicant); all towers can be no closer than five rotor diameters from another wind project; and setbacks from residential structures, property lines, and road and railroad rights-of-way must be an amount equal to the height of the tower plus 25 feet. Pope County did not provide comments into the record during the siting process. Notice of the petition to amend the site permit was provided to the zoning administrator of Pope County. EFP staff did not receive any comments on the matter.

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.

Commission Decision Options

A. Deny the Petition

1. Deny the petition for amendment by Glacial Ridge Wind, LLC and revoke its Large Wind Energy Conversion System Site Permit.

2. Deny the petition for amendment by Glacial Ridge Wind, 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 Glacial Ridge Wind, LLC and amend its Large Wind Energy Conversion System Site Permit as provided in the attached Amendment.

2. Grant the petition for amendment by Glacial Ridge Wind, 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

POPE COUNTY, MINNESOTA

ISSUED TO GLACIAL RIDGE WIND PROJECT~~,~~ LLC

DOCKET NO. IP-6650/WS-07-1073

In accordance with Minnesota Statutes Section 216F.04 and Minnesota Rules Chapter ~~7836~~7854 this Site Permit is hereby issued to:

GLACIAL RIDGE WIND, LLC

Glacial Ridge Wind, LLC, is authorized to construct and operate up to a 20-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 shall expire ~~on: May 1, 2039~~ thirty (30) years from the date of this approval.

Approved and adopted this _____day of May 2011~~April, 2009~~
BY ORDER OF THE COMMISSION

_____

Burl W. Haar,
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e. large print or audio tape) by calling 651.~~201.2202~~ 296.0391(voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1.800.627.3529 or by dialing 711.

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, 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, 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 (the expiration date is stated on the cover of the permit amendment):

This Permit shall expire ~~on May 1, 2039~~ thirty (30) years after the date this Permit was approved and adopted.