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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. ET6656/WS-08-573

Meeting Date: March 19, 2009.....Agenda Item # _____

Company: **Wisconsin Power and Light Company (Bent Tree Wind Project)**

Docket No. **PUC Docket Number: IP 6605/WS-08-573**

**In the Matter of the Application of Wisconsin Power and Light Company for
a Site Permit for the 400 MW Bent Tree Wind Project in Freeborn County.**

Issue(s): Should the Commission grant the requests for a contested case hearing on the
Bent Tree Wind Project?

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Relevant Documents

1. Bent Tree Wind Project Second Re-filed
LWECS Site Permit Application.....August 22, 2008
2. Draft Site Permit for Bent Tree Project.....September 16, 2008
3. Public Comments Received.....December 5, 2008

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The enclosed materials are Comments and Recommendations of the Office of Energy Security Energy Facility Permitting Staff. They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted.

(Note: see eDockets (08-573) or the PUC Facilities Permitting website for additional documents <http://energyfacilities.puc.state.mn.us/Docket.html?Id=19665>)

Statement of the Issue

Should the Commission grant the requests for a contested case hearing on the Bent Tree Wind Project?

Introduction and Background

Wisconsin Power and Light (WPL) filed a site permit application for the proposed 400 megawatt (MW) Bent Tree Wind Large Wind Energy Conversion System (LWECS) Project in Freeborn County, located north of Albert Lea with the Commission on August 22, 2008. In its Order dated September 16, 2008, the Commission accepted the application as complete and made a preliminary determination that a draft permit could be issued for the project.

Certificate of Need

A Certificate of Need (CON) from the Commission also is required for this project. On August 27, 2008 a Commission Order accepted the Certificate of Need Application from Wisconsin Power and Light for 200 Megawatts of the proposed phased 400 MW Bent Tree Wind Project (PUC Docket No. IP-6657/CN-07-1425). In its Order the Commission approved the use of an informal review process and requests that the Office of Administrative Hearings coordinate with Commission staff and hold at least one public hearing on the project.

Office of Energy Security Energy Facility Permitting (EFP) is required to prepare an Environmental Report (ER) for the CON process pursuant to Minnesota Rules 7849.7050-.7080. The ER is scheduled to be completed in April 2009.

Public Participation Process

Upon acceptance of the applications, Office of Energy Security Energy Facility Permitting (EFP) staff initiated the review requirements of Minnesota Rules Chapter 7836 (Wind Siting) and Minnesota Rule 7849.7050 (CON Environmental Report). As part of the review process for the site permit and scoping requirements for preparation of the Environmental Report for the CON, the public is provided with an opportunity to submit comments about the scope of issues to be addressed in the Environmental Report as well as proposed site permit conditions.

Two information/scoping meetings were held on October 21, 2008, one in Albert Lea and the other in Hartland, to provide an overview of regulatory review requirements and to answer questions about the site permit application and the draft site permit. Approximately 20 people

attended the first meeting; approximately 50 people attended the second meeting. The record to receive comments remained open until December 3, 2008.

Twenty-eight written comments were received, including 25 in a form-letter format. These 25 letters questioned the adequacy of residential setbacks, requested a set back of one mile from non-participating landowner's property lines and requested, if necessary, a contested case hearing for the presentation of documents that substantiate this request.

The other three comment letters were from two state agencies (Department of Natural Resources and Minnesota Department of Transportation) and the applicant.

Regulatory Process and Procedures

Any person may request in writing that a contested case hearing be held on an application for a site permit for a proposed LWECs project. The request must be filed within the time established for public comments on the draft site permit. The request must include the issues to be addressed in the hearing and the reasons a contested case hearing is required to resolve those issues. Minnesota Rules 7836.0900, Subp. 5 (A).

Following a request for a contested case hearing the Commission shall order a contested case hearing if it finds that the person requesting the contested case hearing has raised a material issue of fact and that holding a hearing would aid the Commission in making a final determination on the permit application. Minnesota Rules 7836.0900, Subp. 5 (B).

For a contested case hearing, the Commission shall identify the issues to be resolved and limit the scope and conduct of the hearing according to applicable law, due process, and fundamental fairness. Alternatively, the Commission may request the administrative law judge to identify the issues and determine the appropriate scope and conduct of the hearing according to applicable law, due process, and fundamental fairness. Minnesota Rules 7836.0900, Subp. 5 (D).

Issues Raised in Petition for Contested Case Hearing

The form letters indicated that the residential setback requirements for turbine placement are inadequate and unsafe and asserted that the setback requirements will negatively impact the health and safety of families and neighbors, and requested a set back of one mile from non-participating landowner's property lines. The letters also requested, if necessary, a contested case hearing for the presentation of documents that substantiate this request.

Of the 25 letters, only one submitted any supporting documentation, which was a press release from *National Wind Watch* and comments from Dr. Nina Pierpont addressing a number of wind turbine issues. All of the written comments received are a part of the Commission record in this proceeding and have been included as relevant documents.

Generally, the 25 written comment letters followed a form-letter format (see relevant documents), which read as follows:

I, along with a group of concerned residents of Freeborn County, Minnesota, believe that the residential setback requirements for turbine placement, as proposed in the draft site permit, are inadequate and unsafe. I am supported in this view by numerous engineers, doctors, audiologists, health and safety organizations, and governments in both the United States and abroad.

The setback requirements contained in the current proposal will negatively impact the health and safety of my family and my neighbors. Because of this, I am demanding that should a permit be issued for this project, it must include a minimum of a 1 mile setback from non-participating landowner's property lines.

Should it be necessary to request a contested case hearing for the presentation of documents that substantiate this request, you may consider this letter as such. My neighbors and I would welcome any opportunities to present this information.

The letters from commenter's stated that the proposed site permit conditions regarding some of the setbacks are "inadequate and unsafe and requested a minimum setback of one mile from non-participating landowner's property lines." The stated request for a contested case hearing, they say, would allow "for the presentation of documents that substantiate this request..."

Despite the ambiguity of the request, it is EFP staff's understanding that the commenter's intent was to ask for a contested case hearing.

OES EFP Staff Comments and Analysis

With regard to the timing requirement of Minnesota Rules 7836.0900, Subp. 5 (A), all of the written comments were filed within the time established for public comments on the draft site permit.

The request, however, also must include the issues to be addressed in the hearing and the reasons a contested case hearing is required to resolve those issues. The 25 written comments identified general setback issues by asserting that the proposed setbacks are inadequate and suggesting that a one mile setback is necessary to protect non-participating landowners. The written comments did not indicate why a contested case hearing is necessary "for the presentation of documents that substantiate this request."

Minnesota Rule 7836.0900, Subp. 5. (B) states "The Commission shall order a contested case hearing if the commission finds that the person requesting the contested case hearing has raised a material issue of fact of fact and that holding a hearing would aid the PUC in making a final determination on the permit application."

Thus, the two issues before the Commission are: 1) have the person's who submitted the written comments "raised a material issue of fact" and; 2) would a contested hearing aid the PUC in making a final determination on the permit application?

Material Issues of Fact

With regard to the first issue, EFP staff believes the commenter's appear to have "raised a material issue of fact." Based on the press release from *National Wind Watch* and comments from Dr. Nina Pierpont provided by the one commenter, it appears as if the request for a minimum 1 mile setback relates to concerns with possible health effects of low frequency vibrations and sounds from wind turbines.

LWECS site permits contain conditions that address noise and numerous other issues. These have been developed over time to incorporate state standards into LWECS requirements and respond to issues that have arisen in the permitting process. However, low frequency vibrations and sounds from wind turbines are not currently addressed. Whether there should be permit conditions relative to this issue and the nature of such a condition would appear to be a material issue.

Contested Case Hearing as Aid

With regard to second issue, EFP staff does not believe that a contested case hearing is the most appropriate course of action for providing the public with a mechanism to present information on the question of low frequency vibrations and sounds.

First, we believe that there are other mechanisms available for the commenter's to achieve their stated objective of presenting documents that substantiate their request for a one mile setback. As noted earlier, the Certificate of Need proceeding associated with this project (PUC Docket No. IP-6657/CN-07-1425) includes a public hearing. The Commission could expand the scope of the hearing to include siting and permitting issues as well as the need of the facility. This would provide another venue for siting and permitting concerns to be expressed without holding a separate contested case hearing in this docket.

This approach was used in the High Prairie Wind Farm II, LLC (Docket No. PT-6556/WS-06-1520), in response to a request for a contested case hearing. In its Order, the Commission expanded the scope of the public hearing held for the Certificate of Need proceeding.

Second, the issue is not unique to the Bent Tree Wind Project or this docket. Similar issues and concerns are also being raised by persons from other counties (Clay County) in which there are two active dockets, and in other counties (Goodhue and Stearns), in which we have no active dockets, but expect to receive site permit applications. It is expected that the issues raised by commenter's in this docket will be expressed in subsequent LWECS site permit proceedings. Consequently, these issues are of concern to residents within this project, to WPL as a developer, to residents who may reside near future projects, to other wind developers in Minnesota and developers in other states who follow what is going on in Minnesota.

Since the issues raised by the commenter's are related to the effects of wind turbines in general, rather than a specific project, EFP staff believes that analysis of the current scientific evidence is the best or most effective approach. To that end, EFP staff has requested that the Minnesota Department of Health prepare a "white paper" documenting the current scientific information

and identifying possible actions, if any, that Minnesota should take to further address the issues. The results of this effort are expected by May 15, 2009, and could be entered into the record of this proceeding and used to inform future permitting decisions.

This approach is consistent with past practices in Minnesota's wind siting program to resolve issues of significance. Since 1995, Minnesota's wind siting program has dealt with numerous issues. A goal of the program is to provide uniformity and standards through permit conditions that apply to all developers of wind energy facilities in Minnesota.

One of the first significant issues was impacts on avian resources, followed by bat interactions with wind turbines. In 2000, the final report "Avian Monitoring Studies at the Buffalo Ridge, Minnesota Wind Resource Area: Results of a 4-year Study" was released. This study was followed by a 2-year study titled "Bat Interactions with Wind Turbines at the Buffalo Ridge, Minnesota Wind Resource Area," which is an assessment of bat activity, species composition, and collision mortality.

Other natural resource issues that were similarly studied to develop site permits conditions include but are not limited to: native prairie fragmentation, Best Management Practices for Topeka shiner habitat, and a Dakota Skipper butterfly study.

Other issues site permits have addressed include but are not limited to: telephone interference issues, microwave beam path study requirements, wind buffers to minimize wake loss between adjacent, but competing projects, and setbacks from non-participating landowners.

Many of these issues have been addressed through permit requirements to further insure that proposed wind projects are in compliance with all rules and regulations of all state and federal agencies. The methodologies by which these requirements have been established vary, but it has always been an objective of the program to be pro-active in resolving emerging issues when identified.

Commission Decision Options

- A. Deny the request for a contested case hearing.
- B. Deny the request for a contested case, but expand the scope of the public hearing that will be held on the Certificate of Need proceeding to include issues relating to siting and permitting.
- C. Grant the request for a contested case hearing; if the request is granted the Commission must determine the scope of the contested case proceeding or have an Administrative Law Judge from the Office of Administrative Hearings determine the scope of the proceeding.
- D. Make some other decision deemed more appropriate.

OES EFP Staff Recommendation. EFP staff recommends option B.

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