



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. IP-6824/WS-09-830

Meeting Date: February 23, 2012 Agenda Item # 2

Company: West Stevens Wind, LLC

Docket No.: **IP-6824/WS-09-830**

**In the Matter of the Site Permit Application for a 20 Megawatt Large Wind
Energy Conversion System in Stevens County, Minnesota.**

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

EFP Staff: Scott Ek.....651-296-8813

Relevant Documents

Site Permit Application.....July 13, 2009
Site Permit Application Supplemental/Amended Data (Revision A)..... August 27 and 31, 2009
Order Granting Site Permit February 25, 2010
Petition to Amend Permit..... January 4, 2012
Notice of Permit Amendment Petition and Comment Period..... January 19, 2012

The enclosed materials are work papers of the Department of Commerce Energy Facility Permitting (EFP) staff. They are intended for use by the Minnesota Public Utilities Commission (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

Proposed Permit Amendment

Relevant documents and additional information can be found on eDockets (Docket 09-830) or the Commission's Energy Facilities Permitting website at:
<http://energyfacilities.puc.state.mn.us/Docket.html?Id=24842>.

Statement of the Issues

Should the Commission amend the site permit per West Stevens Wind, LLC's petition?

Introduction and Background

The Commission issued a site permit to West Stevens Wind, LLC (West Stevens or permittee) to construct a 20 megawatt large wind energy conversion system in Stevens County on February 25, 2010, pursuant to Minnesota Statutes 216F and Minnesota Rules 7854.

On January 4, 2012, the Commission received a request from West Stevens 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 February 25, 2014. West Stevens indicates its project was assigned to the Midwest Independent Transmission System Operator (MISO) Coordinated Group Study Six in July of 2007. Currently, the project is entered in the Minnesota Definitive Planning Phase Cycle 1 Group System Impact Study, the process that resulted from the generator interconnection queue reform in 2008.

West Stevens argues that the inability to secure a PPA and begin construction is due to the impact of the MISO re-study of the Group 5 System Impact Study to determine the "but for" upgrades required by Federal Energy Regulatory Commission, and the sequential Minnesota Definitive Planning Phase Cycle 1 Group System Impact re-study. MISO anticipates this work will be completed by February 2012.

Regulatory Process and Procedures

A Notice of Permit Amendment Petition and Comment Period was issued by EFP staff on January 19, 2012, and was distributed to all persons on the project mailing list. Included in the notice was information regarding amendment or revocation of the site permit under Minnesota Rule 7854.1300. Comments were accepted through February 2, 2012. EFP staff did not receive any public comments during the comment period.

Under Minnesota Statutes 216F.04(d) the Commission has the authority to modify, suspend, or revoke a site permit. The Commission's procedure for amending or revoking permits is identified in Minnesota Rules 7854.1300. Under subpart 2 (Permit Amendment) of this rule, the Commission may amend a site permit at any time if the Commission has good cause to do so. Subpart 4 (Procedure) of this rule authorizes 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, West Stevens 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. The Commission may determine whether the permit should be amended or revoked.

Under section III.K.2 of the site permit, West Stevens must advise the Commission of the reason it has not completed the pre-construction surveys and studies required in section III.D of the site permit and the reason it has not commenced construction of the project within two years of permit issuance. The Commission may determine whether the permit should be revoked.

The permittee has advised the Commission of the reason why it is unable to comply with these permit conditions, and has requested that these conditions be amended.

EFP Staff Analysis and Comments

The permittee has requested an amendment to allow an additional two years to obtain a PPA or other enforceable mechanism and to commence construction. Granting the two-year extension would allow West Steven's up to four years to obtain a PPA or other enforceable mechanism.

West Steven's request for a permit extension is based on similar reasoning as Bear Creek Wind Partners, LLC (Bear Creek)¹ – the MISO interconnection process has been very lengthy and uncertain. Bear Creek is the first wind developer to seek an extension based on delays experienced in the MISO queue process for projects that follow the Group 5 re-study efforts.

¹ Minnesota Public Utilities Commission, *Order Granting the Petition for Amendment by Bear Creek Wind Partners, LLC, and Amending its Large Wind Energy Conversion System Site Permit* (September 28, 2011), Docket No. IP-6629/WS-07-297.

Projects such as Bear Creek's project and West Steven's project entered in the First Definitive Planning Phase Cycle have experienced delays as a result of the Group 5 re-study delays. West Stevens argues that unknown interconnection costs due to the lack of completed MISO studies are the primary reason it is been unable to secure a PPA.

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 the permittees control have introduced a level of uncertainty that make it difficult, if not impossible, to execute a PPA or other enforceable mechanism for off-load of the energy generated 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 or other enforceable mechanism, the Commission should also extend the time for permittee to commence construction.

EFP staff has prepared an amendment to reflect a two-year extension of the permit. The attached proposed site permit amendment revises the cover page and sections III.J.4, III.K.2 and III.L of the original site permit.

Commission Decision Options

- A. Grant the petition for amendment by West Stevens Wind, LLC and amend its large wind energy conversion system site permit as provided in the attached amendment.
- B. Grant the petition for amendment by West Stevens Wind, LLC and amend its large wind energy conversion system site permit as deemed more appropriate.
- C. Deny the petition for amendment by West Stevens Wind, LLC and revoke its large wind energy conversion system site permit.
- D. Deny the petition for amendment by West Stevens Wind, LLC and suspend its large wind energy conversion system site permit.
- E. Make some other decision deemed more appropriate.

EFP staff recommendation: Option A.

STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

PERMIT AMENDMENT

**LARGE WIND ENERGY CONVERSION SYSTEM
SITE PERMIT FOR WEST STEVENS WIND PROJECT**

**IN
STEVENS COUNTY, MINNESOTA**

**ISSUED TO
WEST STEVENS WIND, LLC**

PUC DOCKET NO. IP-6824/WS-09-830

In accordance with Minnesota Statutes Section 216F.04 this site permit is hereby issued to:

WEST STEVENS WIND, LLC

West Stevens 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: February 25, 2014

Approved and adopted this ____ day of _____ 2012

BY ORDER OF THE COMMISSION

BURL W. HAAR
Executive Secretary

(S E A L)

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 amendment, 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 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 and studies required in paragraph III.D. and commenced construction of the project within two years of the issuance of this permit amendment, 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 amended or revoked. No revocation of this permit may be undertaken except in accordance with applicable statutes and rules, including Minnesota Statute 216F.05 and Minnesota Rule 7854.1300.

Permit Section III.L is amended as follows:

L. EXPIRATION DATE

This permit amendment shall expire on February 25, 2014.