



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET No. IP-6829/WS-09-1239

Meeting Date: September 23, 2010Agenda Item # _____

Company: **Lakefield Wind Project, LLC (a subsidiary of enXco Development Corporation (enXco/eDC))**

Docket No. **PUC Docket Number: IP-6829/WS-09-1239**

In the Matter of the Application of Lakefield Wind Project, LLC for a Large Wind Energy Conversion System (LWECS) Site Permit for the 205.5 MW Lakefield Wind Project in Jackson County.

Issue(s): Should the Commission grant a site permit to Lakefield Wind project, LLC for the 205.5 MW Lakefield Wind Project?

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Relevant Documents

Site Permit Application for Lakefield Wind.....November 4, 2009
ALJ Summary of Public Comment..... August 30, 2010

The enclosed materials are work papers of the Office of Energy Security (OES) Energy Facility Permitting (EFP) Staff. 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 tape by calling (651) 201-2202 (Voice) or 1-800-627-3529 (TTY relay service).

Documents Attached:

1. Lakefield Wind Project Site Maps (Constraints, Noise Profiles with 50 dB(A) isolines, Air Photo, USGS Quad, Wind Rights, Turbine Access Roads and Electrical Collection Lines, and FAA Lighting Plan)
2. Proposed Findings of Fact and Conclusions
3. OES EFP Staff Exhibit List
4. Proposed Site Permit

Note: see eDockets filings at (09-1239) or the Commission website at: for additional documents: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=25684> for project related documents.

Statement of the Issue

Should the Commission grant a site permit to Lakefield Wind Project, LLC for the 205.5 MW Lakefield Wind Project?

Introduction and Background

Lakefield Wind Project, LLC applied for a site permit on November 4, 2009; it was accepted by the Commission on December 21, 2009.

On June 22, 2009, Lakefield Wind Project, LLC, entered into a 20-year Power Purchase Agreement with Indianapolis Power and Light.

Project Location and Land Control

The proposed Lakefield Wind Project will be located in central Jackson County on agricultural land in Des Moines, Hunter, Belmont and Heron Lake townships. The project area is located several miles west of the city of Jackson and just to the east, north and south of the city of Lakefield. The Project area, approximately 32,445 acres in size, will encompass lands north and south of I-90, as shown on the accompanying maps. See Attachment 1 in the Commission's Packet.

Lakefield Wind, has obtained lease and easement option agreements and/or rights to such agreements with 204 landowners controlling 250 parcels of land totaling approximately 19,000 acres of land within the project site boundary. These wind and land rights easements will be used to site the turbines and all associated facilities and provide the necessary wind access buffers and setbacks defined by conditions in the site permit.

Project Description

The Project for which a permit is being requested includes the following associated facilities:

1. A wind turbine layout consisting of up to 137 General Electric 1.5 MW wind turbine generators mounted on 80 meter (262.5 foot) towers with a rotor diameter of 77 meters (252.6 feet);
2. Gravel access roads;

3. Electrical collection system, SCADA wiring, pad mounted turbine transformers, project substation and permanent meteorological towers (up to 2) and other associated miscellaneous facilities.

The Project also includes Operations and Maintenance buildings consisting of two existing buildings purchased in city of Lakefield.

The Project is scheduled for construction in 2010 with an expected in-service date of September 30, 2011.

Regulatory Process and Procedures

A site permit from the Commission is required to construct a Large Wind Energy Conversion System, which is any combination of wind turbines and associated facilities with the capacity to generate five megawatts or more of electricity. This requirement became law in 1995. The Minnesota Wind Siting Act is found at Minnesota Statutes Chapter 216F. The rules to implement the permitting requirement for LWECs are in Minnesota Rules Chapter 7854.

Certificate of Need

A Certificate of Need (CN) from the Commission for a large electric power generating plant is also required because the Project exceeds 50 MW in size (Minn. Stat. 216B.243). On September 2, 2009, Lakefield filed an Application for a CN and on December 3, 2009, a Commission Order accepted the CN application [See PUC Docket No. 6829/CN-09-1046]. A site permit cannot be granted before a CN is issued. OES EFP staff combined portions of the site permit public participation process with portions of the environmental review process in the CN proceeding for the Project, as has been done in several recent cases to achieve efficiencies. This included combining notices, public information and environmental review scoping meetings and comment periods. An Environmental Report (ER) was prepared by OES EFP staff on July 2, 2010, for the CN proceeding. Upon completion of the environmental report, OES posted notice of Public Hearing and Environmental Report Availability on eDockets and the Commissions web page. Notice was also published in the *Lakefield Standard* on July 8, 2010. The Office of Administrative Hearings conducted a public hearing on the CN proceeding, including the environmental report, on July 19, 2010.

Permit Application and Acceptance

On November 4, 2009, Lakefield Wind, LLC filed a site permit application and on December 21, 2009, a Commission Order accepted Lakefield's site permit application for the Lakefield Wind Farm. An OES notice of site permit application acceptance was issued on December 28, 2009. The applicant distributed the site permit application and notice of application acceptance to local, state and federal governmental agencies and to landowners.

Preliminary Determination on Draft Permit

On March 9, 2010, a Commission Order made a preliminary determination that a Draft Site Permit may be issued for the Lakefield Wind Project. This allowed EFP staff to proceed with the notice requirements of Minnesota Rules 7854.0800 and 7854.0900. Notice of the April 8, 2010,

public information and scoping meeting was published in the *Lakefield Standard* and *EQB Monitor* and also mailed to persons and governmental agencies required by rule.

Public Participation Process and Public Comments

The rules provide opportunities for the public to participate in deliberations on the LWECS site permit application. The public was advised of the submission of the site permit application after the site permit application was accepted. Public comments on information in the application and issues to be considered in development of a draft site permit were accepted through January 27, 2010.

OES EFP staff received one comment letter from the Minnesota Department of Natural Resources (DNR) and a report submitted by Lakefield Wind, titled *Ecological Risk Assessment Rare Species, Birds, Bats, Wetlands and Managed Lands*. EFP staff comments and recommendations submitted to the Commission on February 26, 2010, summarized the issues raised by the DNR in its January 27, 2010, comment letter and the information presented in the *Ecological Risk Assessment*. The Commission took no action on the DNR proposed exclusion areas, and directed “The Applicant to work with EFP and DNR staff to identify and conduct studies to assess the need for exclusion area and avian and bat specific permit conditions.”

OES EFP staff held a public information and ER scoping meeting in the city of Lakefield on April 8, 2010. OES EFP staff provided an overview of the LWECS site permitting process, reviewed the proposed site permit conditions and sought comments on issues to be included in the scoping decision for the environmental report. OES EFP staff and Lakefield Wind responded to project specific questions and general questions about wind energy. The public asked questions about project status and timing, setbacks from homes and roads, taxes and lease termination. No substantive issues were raised at the information meeting. Approximately 80 people attended the information and ER scoping meeting.

The deadline for submitting comments following the public information and ER scoping meeting was April 29, 2010. One letter from the Minnesota Department of Transportation (MnDOT) and an email from the Jackson County Highway Engineer were received. The letter and email did not raise any significant issues.

A public hearing on Lakefield Wind Project was held on July 19, 2010, in the city of Lakefield presided over by Richard Luis from the Office of Administrative Hearings. Approximately 20 people attended the public hearing. On August 30, 2010, Administrative Law Judge Luis filed his “Summary of Public Testimony.” The ALJ’s summary provides an overview of project background and development, and comments from John Nauerth, Mike Handzus, Thomas Hotzler, and Richard Klima regarding setbacks, public funding, noise, turbine layout, emergency response, safety procedures, collector line and repair of tile lines damage by project construction. Mr. Nauerth, a supporter of the project, urged commencement of construction as soon as possible.

In addition to the public comments at the hearing, written comments were submitted by Mike Handzus and the Minnesota Department of Natural Resources. Mr. Handzus written comments

expressed concerns about noise, shadow flicker, ice throw, public safety, and emergency situations.

Standard for Permit Issuance

The test for issuing a site permit for a Large Wind Energy Conversion System is to determine whether a project is compatible with environmental preservation, sustainable development, and the efficient use of resources. Pursuant to Minnesota Statutes section 216F.02, certain sections of Minnesota Statutes chapter 216E (Minnesota Power Plant Siting Act) apply to siting LWECS, including 216E.03, subd. 7 [Considerations in designating sites and routes.] Also, the law allows the PUC to place conditions in LWECS permits [Minnesota Statutes 216F.04 (d)].

OES EFP Staff Comments and Analysis

The comments summarized by the ALJ, and the written comments of Mike Handzus and DNR are addressed in the proposed findings.

OES EFP staff analyses lists the categories of issues raised and how the proposed site permit or other jurisdictions address the issue.

Transportation: MnDOT's letter on April 27, 2010, indicated no concerns with the Lakefield Wind Project, but clarified MnDOT's permitting and coordination requirements. If any turnoff point from a state highway requires work in the state right-of-way, or materials or structures need to be stored or placed in the right-of-way, a MnDOT District 7 permit will be required. Comments from the Jackson County Highway Engineer identified concerns about damage to local roads as a result of project construction.

OES EFP Response: Jackson County and Lakefield Wind are entering into a development agreement that addresses the county's concerns about road damages and repair of roads, county drainage ditches and public safety issues. Impacts to roads are discussed in Findings 49, 50, and 53, and in the Site Permit at Condition II.A.3, III.B.8, 16 and 17, and IV.E.2.

Turbine Setbacks: Mike Handzus, Thomas Hotzler and Richard Klima raised questions regarding the positioning and setback requirements for each turbine.

OES EFP Response: Turbine setback requirements are addressed in the site permit in numerous places and specifically address setbacks from: homes, residences, non-participating landowners, public lands, microwave beam paths, land mobile radios, and noise setbacks. Mr. Klima asked about locating homes closer to the turbines than the distance allowed for by the State noise standard and it was explained to him that the distance required to meet the noise standard could not be waived. Setbacks are discussed in Findings 39, 45, 56, 72, and 79; and in the Site Permit at II.A., and II.B.

Collector Line Locations: A couple of members of the public asked about the placement (underground or overhead) of the project's electrical collector line system.

OES EFP Response: The proposed project will have approximately 56 miles of underground cables for the collector and feeder lines on private property within the wind farm. Underground electrical lines will be buried in trenches. No overhead collector or feeder lines are being

proposed. Collector and feeder line are addressed in Finding 74. Permit Conditions II.B.7 and II.B.8 both require underground cables to be sited in a manner acceptable to affected landowners.

Shadow Flicker: Mike Handrus in his written comments to the ALJ raised concerns about the effects of shadow flicker on residents.

OES EFP Response: Shadow flicker is described as “a moving shadow on the ground resulting in alternating changes in light intensity.” Shadow flicker computer models simulate the path of the sun over the year and assess at regular time intervals the possible shadow flicker across a project area. Other than within approximately two rotor diameters from the base of a turbine, shadow flicker usually occurs in the morning and evening hours when the sun is low in the horizon and the shadows are elongated. Shadow flicker does not occur when the turbine rotor is oriented parallel to the receptor, or when the turbine is not operating. In addition, no shadow flicker will be present when the sun seen from a receptor is obscured by clouds, fog, or other obstacles already casting a shadow such as buildings and trees.

Shadow intensity will vary with the distance from the turbine. Closer to a turbine, the blades will block out a larger portion of the sun’s rays and shadows will be wider and darker. Receptors located farther away from a turbine will experience much thinner and less distinct shadows since the blades will not block out as much sunlight. Shadow flicker will be greatly reduced or eliminated within a residence when buildings, trees, blinds or curtains are located between the turbine and receptor.

A Wind Turbine Shadow Flicker Analysis for Lakefield, Minnesota, dated July 12, 2010, was prepared by Wind Energy Consulting and Contracting, Inc., to calculate shadow flicker exposure for the 218 homes/residences in the project footprint. Of the 218 residences, it was calculated that 59 of the residences would have more than 30 hours of shadow flicker per year or more than 30 minutes per day, which is a worst case scenario. Of those 59 homes, nine will have more than 100 hours of shadow flicker per year. The shadow flicker levels at each residence are identified in terms of hours per year, days per year, and the maximum duration of shadow on the worst day (Exhibit 28, Table 3). For residences that have more than 30 hours of shadow flicker per year or more than 30 minutes on the worst day, a graphical calendar has been generated (one for each residence). The graphical calendars show at what time of the day and year the shadow could fall on the residence), (Exhibit 25, Appendix).

There are no published standards for shadow flicker and no examples of turbines causing photosensitivity related problems. In Germany, 30 hours of shadow flicker per year is acceptable. The 30 hour number is based on the premise that the sun is shining, the building affected is occupied, the occupants are awake and the turbine is operating. The site permit does not contain shadow flicker limits.

Turbine Noise: Mike Handrus in his oral and written comments, as well as Thomas Hotzler and Richard Klima raised concerns about turbine noise.

OES EFP Response: Lakefield Wind evaluated the sound power level (Lp) information provided by the manufacturer of the GE 1.5 MW wind turbine to assess representative noise

levels for the Project. The distance to the 50 dB(A) noise setback isolines (827 feet) 252 meters. Lakefield Wind has incorporated setbacks of at least 1,250 feet (378 meters) from residences to stay below the Minnesota Pollution Control Agency (MPCA) Nighttime Noise Limit of 50 dBA. The noise setback is based upon the calculated distance to the 50 dB(A) noise level for the highest noise or “worst case” noise scenario output associated with the wind turbine selected for this Project, plus an additional setback distance as a safety factor to account for GIS-based mapping accuracy.

A Wind Turbine Noise Analysis for the Lakefield Minnesota, dated March 3, 2010, prepared by Wind Energy Consulting and Contracting, Inc., evaluated the project noise levels at 218 residences within the site. Noise levels varied from 25.2 to 48.7 dB (A). Noise levels were calculated using the WindPRO 2.6/2.7 wind project modeling software package.

EFP staff believes that Lakefield Wind has adequately considered noise during the planning stages of the Lakefield Wind Project to make informed decisions about turbine placement. Noise is also addressed in Findings 43, 44 and 45. The permit (II.B.3.) requires the Permittee to comply with noise standards established by the MPCA. The permit at III.C.6 also provides for a post construction study of noise upon request of the Commission.

Ice Throw: Mike Handrus raised concerns about ice throw and safety of residents within the site.

OES EFP Response: In winter months ice may accumulate on the wind turbine blades when the turbines are stopped or operating very slowly. Furthermore, the anemometer may ice up at the same time, causing the turbine to shut down during any icing event. As weather conditions change, any ice will normally drop off the blades in relatively small pieces before the turbines resume operation. This is due to flexing of the blades and the blades’ smooth surface. Although turbine icing is an infrequent event in Minnesota, it remains important that the turbines are not sited in areas where regular human activity is expected below the turbines during the winter months. Staff believes that turbine setbacks from residences and roads are adequate to minimize impacts from ice throw. See Finding 63 and site permit conditions II.A.2 and 3.

Tile Lines: Richard Klima and Milton Fricke raised several questions about damage to tile lines and the repair of damaged tile lines.

OES EFP Response: Lakefield Wind has indicated that tile tiles will be cut or damaged for the installation of foundations and the electrical collector and feeder lines. Lakefield’s application reviews what will be done with tile lines (Exhibit 1, p. 59). Tile line damage is also discussed in Finding 83 and addressed in the site permit at III.B.3.

Emergency Situations: Richard Klima also raised concerns about emergency situations such as fires and the collapse of turbines. Mr. Handzus’s written comments provided accounts turbine fires and damages inflicted by the collapse of towers.

OES EFP Response: Wind turbines constructed as part of the Lakefield Wind Project will be registered with the Jackson County Emergency Management Department. Lakefield Wind is

also working with the County EMD to develop appropriate response procedures for response to emergencies, natural hazards, hazardous materials incidents, manmade problems (e.g. fire) and related incidents concerning the Project. Lakefield Wind will also work with the County Planning Office for assignment of 911 addresses for coordination of emergency response.

Project construction and operation is expected to have little impact on the security and safety of local residents. Lakefield Wind will also control public access to the Project during construction and operation. Lakefield Wind will provide security during construction and operation of the project, including fencing, warning signs, and locks on equipment and facilities. The Permittee will also provide landowners, interested persons, public officials and emergency responders with safety information about the project and its facilities. See site permit conditions III.B.15 and 16.

Animals and Wildlife: The DNR comments from January 27, 2010, note that the project area is considered by DNR to be a high risk site due to the numerous public lands within and adjacent to the project area. In its comments to the ALJ, on August 6, 2010, the DNR noted concern over the lack of bat survey work and the possibility that spring bird surveys missed the majority of bird migration due to the May 10 start date. This concern was also raised in the OES EFP's April 20, 2010, Final Bird Survey Protocol.

OES EFP Response: Avian and bat studies conducted at the Buffalo Ridge, Minnesota (Johnson et al 2000), found an average of 1-4 bird fatalities/turbine/year and 1-3 bat fatalities/turbine/yr. Projects in areas with similar habitat and cover types would likely have similar fatality rates, depending on migration patterns, known resting and foraging areas, and potential for bat hibernacula. However, as wind facilities and turbine sizes become larger and move into areas or landscapes where migration or use patterns are less understood, it becomes increasingly difficult to make landscape level comparisons between facilities and predict the impacts on avian and bat populations.

Recent studies indicate a broad range in avian and bat fatalities across the United States as a result of wind development, with the highest fatalities occurring in the eastern United States. In the Midwest, post-construction studies completed in Iowa, Minnesota, and Wisconsin confirm a wide range of fatality rates. The highest bird and bat fatalities were found at the 145 MW Blue Sky Green Field wind facility in Wisconsin, with bird fatalities at 12 birds/turbine/year and bat fatalities at 40 bats/turbine/year (Gruver et al. 2009). Fatalities range from 1 to 4 birds/turbine/year and from 1 to 8 bats/turbine/year across most of the upper Midwest.

Following meetings with U.S. Fish and Wildlife Service and DNR, OES provided applicants with Final Bird Survey Protocol for flight path studies and breeding bird surveys on April 20, 2010, and noted that (1) the need for fall bird surveys would be assessed based on the findings of spring bird survey work and (2) bat survey methods still needed to be resolved and noted recommended survey dates provided by DNR and USFWS.

These pre-construction avian surveys were conducted from May 10-June 16, 2010. The objectives of the study were to: (1) characterize flight patterns near select proposed turbine locations to identify local flight paths between Boot Lake and South Heron Lake, (2) evaluate the diversity of breeding birds at select turbine locations within the proposed project area, and (3)

determine the presence/absence of threatened, endangered, and species of special concern. Conclusions of the survey are documented in Finding 99.

Bird data from the Applicant's *Ecological Risk Assessment* indicated a higher number of observed bird species than the field surveys completed from May 10-June 16, 2010. This may indicate that either the survey work missed the migrating bird season due to the late start date, or that fewer bird species utilize the project area due to unsuitable habitat. Staff believes that additional survey work during the migratory period in spring 2011 would resolve this uncertainty.

To date, no surveys of bat population have been conducted. The Applicant has stated that it does not think pre-construction bat survey work is necessary because of the five bat species found in the project area, none are federal or state listed species. Additionally, due to the agricultural nature of the landscape, the Applicant believes there is little suitable bat habitat, and that bat fatalities are likely to be similar to those of Buffalo Ridge (2 bats/turbine/year) due to the relative proximity of the projects (40 miles).

Although the project will be sited in land currently used for agriculture, the surrounding lands within and adjacent to the project boundary are known to provide valuable wildlife habitat. This wildlife habitat and potential bird and bat populations could alter expected fatality rates. Staff believes that acoustic bat monitoring and fatality monitoring are effective tools to verify whether or not fatality rates are similar to those found at Buffalo Ridge.

Acoustic bat monitoring and bat fatality monitoring are most effectively conducted concurrently, as done at the Buffalo Ridge and the Blue Sky Green Field facilities. Bat fatalities and bat activity are not always correlated, indicating a need for acoustic activity to be verified with fatality monitoring at turbines. Staff believes that bat surveys can be productively conducted from April 1-May 31, June 1-August 1, and July 15-October 31.

In order to address this uncertainty regarding avian and bat impacts, OES EFP staff has included in the permit a requirement for avian and bat survey work (VII.B) and a requirement for an avian and bat protection plan that has ongoing monitoring and reporting requirements (III.C.2).

The OES EFP staff believes the record in this matter is sufficiently robust to allow the Commission to make a decision on the site permit application. OES EFP also believes the proposed site permit provides sufficient measures to provide necessary guidance regarding project design, construction, restoration, monitoring and operation of the proposed Lakefield Wind Project. There are numerous site permit requirements that protect natural resource features as well as public health and safety.

Based on the record of this proceeding, OES EFP staff concludes that the Lakefield Wind Project meets the procedural requirements and the criteria and standards for issuance of a site permit identified in Minnesota Statutes and Rules. The site permit application has been reviewed pursuant to the requirement of Minnesota Rules Chapter 7854 (Wind Siting Rules).

In accordance with Minnesota Rule 7854.0500 Subp.2, the Commission may not issue a site permit for an LWECS, for which a certificate of need is required, until an applicant obtains such a certificate from the Commission.

OES EFP staff has prepared for Commission consideration proposed Findings of Fact, Conclusions and Order, and an Exhibit List for the Lakefield Wind Project Farm and a proposed Site Permit.

The relevant site considerations addressed in the Findings of Fact (such as human settlement, public health and safety, noise, recreational resources, community benefits, effects on land based economies, archaeological and historical resources, animals and wildlife and surface water) track the considerations described in the Minnesota Power Plant Siting Act for other types of power plants that are pertinent to wind projects. The conditions in this proposed Site Permit are essentially similar to other conditions included in other LWECS site permits issued by the Environmental Quality Board and the Commission.

Proposed Findings of Fact

The proposed Findings (see Attachment 2 in the Commissioner’s packet) address the procedural aspects of the process followed, describe the project, and address the environmental and other considerations of the project. The proposed Findings of Fact reflect some findings that were also made for other LWECS projects. The following outline identifies the categories of the Findings of Fact.

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Exhibit List

OES EFP staff has prepared an exhibit list of documents that are part of the record in this permit proceeding. See Attachment 3 in Commissioner’s packet.

Proposed Site Permit

The OES EFP Staff has prepared a site permit for the Commission’s consideration. See Attachment 4 in the Commissioner’s packet. The proposed site permit is different from the preliminary site permit issued by the Commission. The site permit headings and requirements have been reorganized and modified to better reflect the designated site and where turbines and associated facilities are to be located within the designated site boundaries. Other structural modifications have attempted to improve the overall layout and organization of the permit to provide for greater clarity, while tightening up language in the permit conditions.

Commission Decision Options

A. Lakefield Wind Project Findings of Fact and Conclusions

1. Adopt the attached Findings of Fact, Conclusions of Law and Order prepared for the 205.5 MW Lakefield Wind Project and associated facilities in Jackson County.
2. Amend the Findings of Fact and Conclusions of Law as deemed appropriate.
3. Make some other decision deemed more appropriate.

B. LWECS Site Permit for the 205.5 MW Lakefield Wind Project

1. Issue the proposed LWECS Site Permit for the 205.5 MW Lakefield Wind Project Farm to Lakefield Wind Project, LLC.
2. Amend the proposed LWECS Site Permit as deemed appropriate.
3. Deny the LWECS Site Permit.
4. Make some other decision deemed more appropriate.

OES EFP Staff Recommendation: The staff recommends Options A1 and B1.