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February 17, 2010

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 Office of Energy Security Energy
Facility Permitting Staff
Docket No. IP-6830/WS-10-49**

Dear Dr. Haar:

Attached are the Comments and Recommendation of the Office of Energy Security Energy Facility Permitting Staff in the following matter:

In the Matter of the Application of Paynesville Wind, LLC for a Large Wind Energy Conversion System (LWECS) Site Permit for the 95 MW Paynesville Wind Farm in Stearns County.

The OES EFP staff is also providing you with:

- A. Project Area Map.

OES EFP Staff is available to answer any questions the Commission may have.

Sincerely,

Ingrid Bjorklund
OES EFP Staff

Attachment

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET No. IP-6830/WS-10-49

Meeting Date: February 25, 2010.....Agenda Item # 4

Company: **Paynesville Wind, LLC**

Docket No. **IP-6830/WS-10-49**

In the Matter of the Application of Paynesville Wind, LLC for a Large Wind Energy Conversion System (LWECS) Site Permit for the 95 MW Paynesville Wind Farm in Stearns County.

Issue(s): Should the Public Utilities Commission (Commission) accept the Application of Paynesville Wind, LLC, for a Large Wind Energy Conversion System as complete and appoint a Public Advisor?

Should the Commission vary Minnesota Rules, part 7854.0800 to allow more time for a preliminary determination on whether a permit should be issued or denied for a Large Wind Energy Conversion System?

OES Staff: Ingrid E. Bjorklund651-297-7039

Relevant Documents

Paynesville Wind, LLC, Site Permit Application.....January 29, 2010

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

Documents Attached

1. Site Map

See eDocket filings (10-49) at <https://www.edockets.state.mn.us/EFiling/search.jsp>, or the PUC website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=25836> for project related documents.

Statement of the Issues

Should the Commission accept, conditionally accept, or reject the application of Paynesville Wind, LLC (Applicant or Paynesville Wind) for a Large Wind Energy Conversion System (LWECS) site permit as complete for the 95 megawatt (MW) Paynesville Wind Farm in Stearns County? If the Application is accepted, should the Commission appoint a Public Advisor?

Should the Commission vary Minnesota Rules, part 7854.0800 to allow more time to determine whether a permit may be issued or should be denied for the 95 MW Paynesville Wind Farm in Stearns County?

Introduction and Background

Paynesville Wind has submitted a site permit application to construct the proposed 95 MW Paynesville Wind Farm in Stearns County. Paynesville Wind is a wholly owned subsidiary of Geronimo Wind Energy.

Project Location

The proposed Paynesville Wind Farm will be located in Stearns County in Zion, Paynesville, Spring Hill, and Lake Henry townships, as shown on the accompanying map. The project area is located north of Paynesville and south and east of Lake Henry. The project area encompasses approximately 15,000 acres, of which more than 11,500 acres are under site control. Paynesville Wind believes the site is sufficiently large to provide flexibility in the micro-siting process.

Project Description

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

1. A wind turbine layout consisting of 42 to 63 turbines (depending on turbine specifications), hub height of 80 meters (263 feet) and a rotor diameter of 82.5 meters (270 feet) if the General Electric 1.5 MW wind turbines are selected or 90 meters (295 feet) if the Vestas 1.8 MW wind turbines are selected or 101 meters (331 feet) with the Siemens 2.3 MW wind turbines are selected;
2. Gravel access roads;
3. Electrical collection system, one substation, one metering yard adjacent to an existing substation, one transmission line, one permanent meteorological tower; and
4. Operations and maintenance building.

The Applicant's goal is to complete the construction of the project and achieve commercial operation in the third quarter of 2011.

Regulatory Process and Procedures

Commission review of LWECS entails two separate processes: the Certificate of Need (CN) process and the site permit process. Pursuant to Minnesota Rules, part 7854.0500, subpart 2A, the Commission shall not issue a site permit for which a CN is required until the CN is issued by the Commission. The following provides an overview of the CN and site permit processes.

Certificate of Need Process

A CN is required for the Paynesville Wind Farm because, as a 95 MW LWECS, it qualifies as a “large energy facility” as defined by Minnesota Statutes section 216B.2421, subdivision 2(1). The Applicant applied for a CN, on December 8, 2009, (Docket No. IP-6830/CN-09-1110) prior to filing its site permit application.

On February 5, 2010, a Commission Order accepted Paynesville Wind’s CN application and provided for use of the informal review process to develop the CN record, using comment and reply.

As part of the CN process, public notices are issued and EFP staff conducts a public meeting and prepares an Environmental Report evaluating the human and environmental impacts of the proposed project. A public hearing is then held by the Office of Administrative Hearings.

Site Permit Process

A site permit from the Commission is required to construct a LWECS, 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 requirements for LWECS are in Minnesota Rules Chapter 7854. Paynesville Wind filed a site permit application for the Paynesville Wind Farm with the Commission on January 29, 2010.

Site Permit Application Contents

The required contents of a site permit application are specified in Minnesota Rules, part 7854.0500. These information requirements include, but are not limited to, applicant background information, CN compliance, compliance with state policy, proposed site maps, wind characteristics, turbine locations, discussion of wind rights, project design, associated facilities, environmental impacts, project construction, project operation, costs, schedules, energy projections, and decommissioning and restoration.

Application Acceptance

Application acceptance is guided by Minnesota Rules, part 7854.0600. The Commission may elect to accept, conditionally accept, or reject the application. If the Commission conditionally accepts or rejects an application, the Commission must advise the Applicant of the deficiencies in the application and the manner in which the deficiencies can be addressed.

Within 15 days of LWECS site permit application acceptance, the Applicant is required to provide notice of application acceptance. In addition to publishing this notice in a newspaper of general circulation in each county, the notice is distributed to the county board, each city council and each township board in each county where the LWECS is proposed to be located. This

notice is also posted on eDockets and on the Commission's energy facility permitting web page. In practice this notice is developed by the Applicant with assistance from OES staff to ensure that the notice meets the requirements and intent of Minnesota Rules, part 7854.0600.

As a part of the notice requirements of Minnesota Rules, part 7854.0600, the Applicant must provide a copy of the accepted application to each landowner within the site. The Applicant is also required to distribute the accepted application to the Minnesota Historical Society, the regional development commission(s) within which the LWECS is proposed to be located, the auditor of each county, and the clerk of each city and township in which the LWECS is proposed to be located. The auditors and clerks are to retain the application and make it available for public inspection on request. In practice, the Applicant also provides a copy of the application to anyone requesting a copy. The Applicant is responsible for maintaining the application distribution list. In practice, EFP staff also distributes or has the Applicant distribute copies of the application accompanied by a cover memorandum, requesting comments on the application or the project, to technical representatives from state agencies (Pollution Control Agency, Department of Natural Resources, Department of Transportation, Department of Employment and Economic Development, Board of Water and Soil Resources, Department of Agriculture, and Department of Health) that may have permitting or review authority over the project.

Public Advisor

Minnesota Rules, part 7854.0700 states that upon acceptance of a site permit application, the Commission shall designate a staff person to act as the public advisor on the project. The Commission can authorize EFP to name a staff member from the EFP staff as the public advisor or assign a Commission staff member.

Preliminary Determination on Draft Site Permit

Minnesota Rules, part 7854.0800 states that: "Within 45 days after acceptance of the application by the commission, the commission shall make a preliminary determination whether a permit may be issued or should be denied. If the preliminary determination is to issue a permit, the commission shall prepare a draft site permit for the project. The draft site permit must identify the permittee, the proposed LWECS, and proposed permit conditions."

Issuing a draft site permit does not confer an authority to construct an LWECS. The Commission may change, amend or modify the draft site permit in any respect before final issuance or may deny the site permit at a later date.

Public Participation Process

Public participation in the LWECS site permitting process is guided by Minnesota Rules, part 7854.0900. The Commission provides public notice of the availability of the draft site permit. The notice is required to include:

- Applicant's contact information;
- A brief description of the proposed project, including a proposed site map;
- Locations where the application and draft site permit are available for review and information on how to obtain a copy of the application and site permit;
- The role of the public advisor and how the public advisor may be contacted to obtain more information about the process or the project;
- Time and place of the public information meeting held by the EFP staff;

- The date on which the comment period terminates;
- A statement that during the comment period any person may submit written comments to the Commission on the draft site permit; and
- A statement that a person may request a contested case hearing on the matter.

Notice of draft site permit availability is sent to all persons or agencies who received a copy of the accepted application, published in local newspaper(s) and the *EQB Monitor*, and posted on eDockets and on the Commission's energy facilities permitting web page.

The public information meeting serves several functions. First, it provides EFP staff with the opportunity to provide an overview of the Commission's role in the review and approval of LWECS and associated facilities and to respond to questions or comments about the regulatory review process. Second, it provides the Applicant with an opportunity to present an overview of its proposed LWECS project. Prior to the public meeting, interested persons and governmental agencies would have received the LWECS application and draft site permit. Third, the public meeting provides the public with an opportunity to ask questions of the Applicant and EFP staff and offer comments on the application and draft site permit, which serve as the environmental documents for the project.

The rule requires a minimum of 30 days (commencing with the notice of draft site permit availability in the *EQB Monitor*) for any interested person to submit comments on either the site permit application or the draft site permit. The rule also contemplates that the Commission may wish to extend the public comment period to afford the public adequate time to review the application and other pertinent information in order to formulate complete comments on the draft site permit and the project.

Criteria for a Variance

Minnesota Rules, part 7829.3200 provides that the Commission shall grant a variance to its rules when it determines the following three conditions are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

County Ordinance Standards for LWECS

Minnesota Statutes section 216F.08 authorizes counties to assume responsibility for processing permit applications for LWECS with a combined nameplate capacity of less than 25,000 kilowatts. Pursuant to Minnesota Statutes section 216F.08, Stearns County notified the Commission in writing on December 10, 2009, that the Stearns County Board of Commissioners assumed permitting responsibility for projects under 25 megawatts. Certain standards adopted by ordinance by Stearns County are more stringent than the Commission's General Permit Standards as set forth in Docket No. E,G-999/M-07-1102. Minnesota Statutes section 216F.081 states that the Commission shall consider and apply those more stringent standards unless the Commission finds good cause not to apply the standards. The Applicant addresses Stearns County's standards in its application and states that it will voluntarily meet the county's more stringent setback requirements where feasible.

OES EFP Staff Analysis and Comments

The application has been reviewed by EFP staff pursuant to the requirements of Minnesota Rules Chapter 7854 (Wind Siting Rules). The application provides the information required by Minnesota Rules, part 7854.0500 in a format that all members of the public can access. Acceptance of the application as complete will allow staff to initiate the procedural requirements of Minnesota Rules Chapter 7854.

EFP staff is requesting the Commission direct the applicant to honor requests for additional information as necessary to facilitate the review process.

EFP staff is requesting the Commission vary the procedural requirement of Minnesota Rules, part 7854.0800 that requires a preliminary determination on whether to issue a draft site permit within 45 days to allow additional time. When the CN and site permit processes run concurrently, as in the case with Paynesville Wind, the differing requirements between the CN rules (Minnesota Rules Chapter 7849) and the LWECS site permit rules (Minnesota Rules Chapter 7854) present barriers with respect to process coordination and public input.

Minnesota Rules, part 7829.3200 allow the Commission to grant a variance to its rules if the variance meets three conditions. First, enforcement of the rule would impose an excessive burden on the Applicant or others affected by the rule because of the short time available between application review and the time when a draft site permit must be addressed by the Commission. The sequencing and timing issues between the CN and site permit procedural requirements for LWECS projects impose an excessive burden on the Commission, its staff, the EFP staff, and other interested persons. Second, granting the variance would not adversely affect the public interest. The public interest would be better served by allowing for more timely coordination and sequencing under the CN and site permit procedural requirements, including combining notice requirements, holding joint public meetings and comment periods, and including site permit issues within the scope of the CN public hearing, which would result in greater efficiency and enhanced opportunity for participation. Third, EFP staff believes that an extension, if granted, would not conflict with standards imposed by law.

EFP staff is not aware of any opposition to tolling the time; however, the Commission may wish to offer interested persons the opportunity for oral comment at the Commission meeting.

Commission Decision Options

A. Application Acceptance

1. Accept the Paynesville Wind, LLC Site Permit Application for a Large Wind Energy Conversion System as complete with the condition that Paynesville Wind, LLC will provide additional information as requested by the Commission and the Office of Energy Security Energy Facilities Permitting staff for the Paynesville Wind Farm.
2. Find the Application complete upon the submission of supplementary information.
3. Make another decision deemed more appropriate.

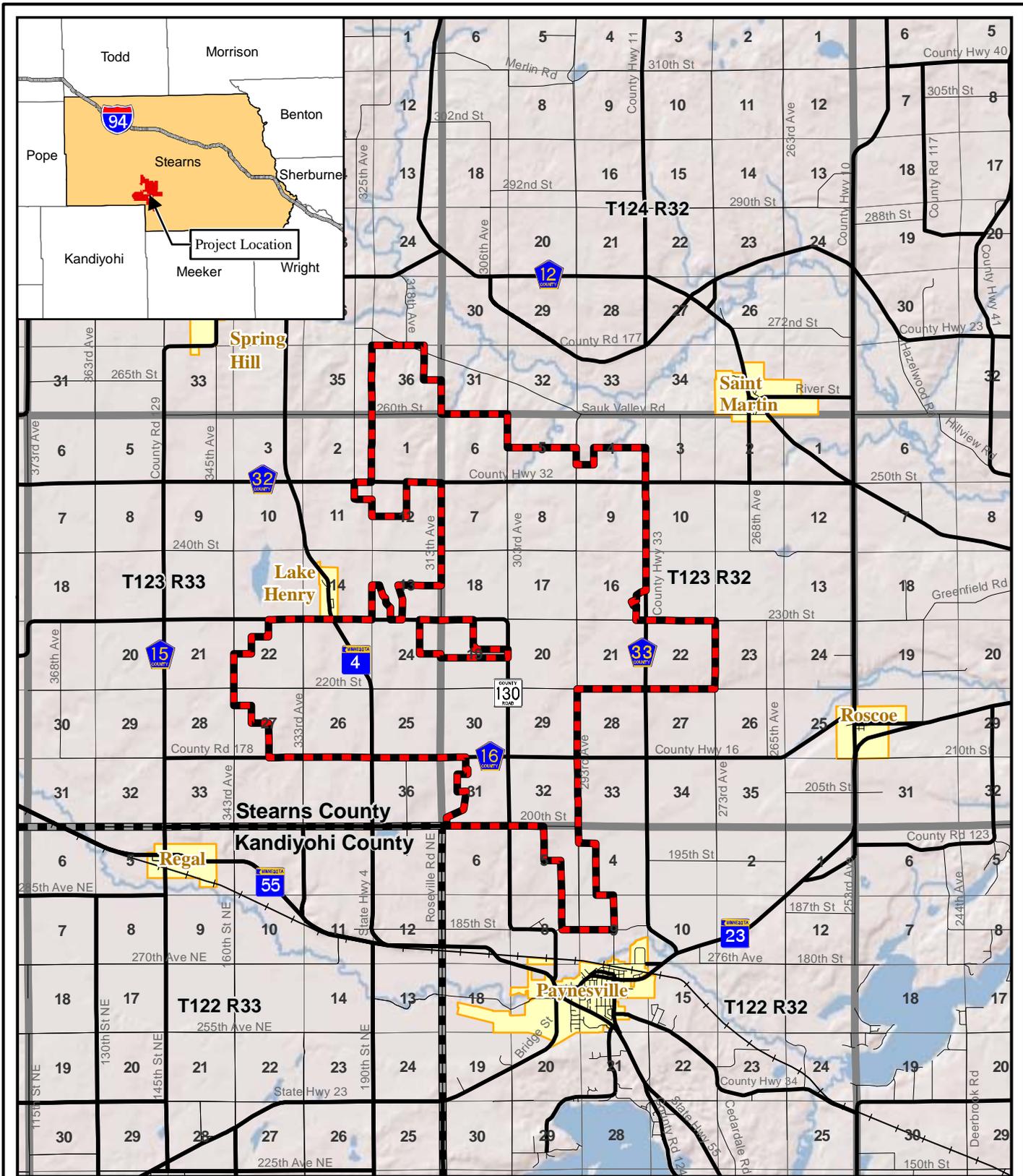
B. Public Advisor

1. Authorize the Office of Energy Security Energy Facilities Permitting staff to name a public advisor for this project.
2. Appoint a Commission staff person as public advisor.
3. Make another decision deemed more appropriate.

C. Variance Request

1. Grant a variance to Minnesota Rules, part 7854.0800 to extend the period for the Commission to make a preliminary determination on whether a permit may be issued or should be denied for an unspecified, but reasonable period of time.
2. Make some other decision deemed more appropriate.
3. Deny the request for a variance.

OES EFP Staff Recommendation: Staff recommends option A1, B1, and C1.



- Legend
- Project Boundary
 - Cities
 - Townships
 - County Boundary

Figure 1-1. Project Vicinity Map
Paynesville Wind Farm
Geronimo Wind Energy
Stearns County, MN