

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
J. Dennis O'Brien	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

**IN THE MATTER OF THE APPLICATION OF
PAYNESVILLE WIND, LLC, FOR A CERTIFICATE
OF NEED FOR A 95 MW LARGE WIND PROJECT IN
STEARNS COUNTY, MINNESOTA**

**PUC Docket Nos. IP6830/CN-09-1110 and
IP6830/WS-10-49**

**IN THE MATTER OF THE APPLICATION OF
PAYNESVILLE WIND, LLC FOR A SITE PERMIT
FOR A 95 MW LARGE WIND PROJECT IN
STEARNS COUNTY, MINNESOTA**

**PETITION FOR APPROVAL TO EXTEND THE IN-
SERVICE DATE AND AMEND THE SITE PERMIT
FOR THE 95 MW PAYNESVILLE WIND FARM**

INTRODUCTION

Paynesville Wind, LLC (“Paynesville Wind” or the “Permittee”) plans to construct a 95 MW large wind energy conversion system in parts of Lake Henry, Paynesville, Spring Hill and Zion Townships in Stearns County, Minnesota (the “Project”). Paynesville Wind submitted applications for a certificate of need and site permit on December 9, 2009 and January 29, 2010, respectively. The Minnesota Public Utilities Commission (“Commission”) issued a certificate of need and site permit for the Project on January 26, 2011. For the reasons outlined in this Petition, the Permittee has not yet begun construction of the Project.

At the time of its application, the Permittee projected an in-service date for the Project of second quarter 2011. Minn. R. 7849.0400, subp. 2H, requires a permittee to notify the Commission and seek a determination if the expected in-service date for a project is delayed by more than one year. Similarly, Minn. R. 7854.1200 requires a permittee to advise the Commission of the reasons for delay if construction of a project has not commenced within two years of the date a site permit is issued. Because Paynesville Wind has not yet constructed the project and does not plan to do so prior to January 26, 2013, Paynesville Wind is hereby notifying the Commission of the delay and requesting extensions as described in this Petition.

Paynesville Wind is seeking a determination from the Commission that the in-service date for the Project may be delayed until December 31, 2014 without need for rehearing. In order to align the timeframes in the certificate of need and site permit, Paynesville Wind is also requesting permit amendments to allow Paynesville Wind to submit evidence of a power purchase agreement or other enforceable mechanism for the sale of power and commence construction on or before July 1, 2014. This revised schedule will allow Paynesville Wind to continue to market power from the Project to potential off-takers, adjust as needed to any extension of federal tax credits or lack thereof, and complete an interconnection agreement for the Project.

PROCEDURAL BACKGROUND

Certificate of Need

Minnesota Rules 7849.0400, subp. 2A, states that “a delay of one year or less in the in-service date of a large generation or transmission facility previously certified by the Commission is not subject to review by the Commission.” If an applicant anticipates a delay beyond one year from the stated in-service date, Minnesota Rules 7849.0400, subp. 2H, requires an applicant to inform the Commission of the desired change and detail the reasons for the change.

The Commission must then evaluate the stated reasons for the change and, within 45 days of receipt of the request, notify the applicant whether the change is acceptable without recertification. *Id.* The Commission shall order additional hearings *if and only if* it determines that the change, if known at the time of the need decision, could reasonably have resulted in a different decision under the criteria specified in Minnesota Rules 7849.0120. *Id.*

Paynesville Wind is seeking a determination approving the extension of the in-service date for the Project to December 31, 2014 without rehearing or recertification.

Site Permit

Paynesville Wind’s site permit requires the Permittee to advise the Commission of the reasons for delay if the Permittee has not obtained a power purchase agreement or some other enforceable mechanism for the sale of electricity from the Project and commenced construction within two years of the issuance of the Permit. (Site Permit Sections 10.2 and 10.3.) Pursuant to the permit and Minnesota Rules 7854.1300, the Commission may amend a permit at any time if the Commission has good cause to do so. The Commission may initiate action to amend a permit upon its own initiative or upon the request of any person but must provide notice and afford the permit holder due process before taking action. Minn. R. 7854.1300, subp. 2 and 4.

Further, Minn. Stat. § 216E.11, which is incorporated into the Wind Siting Act pursuant to Minn. Stat. § 216F.02, allows permittees to proceed with construction at any time within four years of issuance of a site permit. Paynesville’s requested extension fits within this four-year period.

Paynesville Wind is seeking approval of an amendment to Sections 10.2 and 10.3 of the site permit to extend the period for providing proof of a power purchase agreement or other enforceable mechanism for the sale of electricity and to commence construction from January 26, 2013 to July 1, 2014. In addition, Paynesville requests the Commission amend the length of the permit to thirty years from the date of approval of the amendment, rather than the original issuance date.

REASONS FOR REQUEST

In its *Order Granting a Certificate of Need* to Paynesville Wind, the Commission accepted the Minnesota Department of Commerce, Division of Energy Resources’ (“DER”), (formerly the Office of Energy Security), findings regarding the need for the Project. As it relates to the appropriateness of the timing of the Project (Minn. R. 7849.0120 B (1)), the findings are as follows:

Paynesville anticipates that the proposed Project will be in-service by the second quarter of 2011. The timing of the proposed Project does not necessarily coincide precisely with an anticipated need of any particular utility for renewable capacity additions. However, the discussion above demonstrated that there may not necessarily be a one-to-one

relationship between CN applications and Minnesota RES obligations. Further, the OES notes that:

- there will not likely be a one-to-one match between CN applications based on the regional need for renewable generation and Minnesota utilities' RES compliance level,
- additional renewable resources will be needed for certain Minnesota utilities to meet their 2016 RES requirements, capacity additions are typically added in "chunks" due to the benefits of economies of scale,
- the December 31, 2012 sunset of the renewable energy production tax credit and the time limits in place for the availability of the 30 percent investment tax credit may lead to earlier wind additions than might be the case otherwise, and
- there are uncertainties involved in accomplishing the associated transmission additions or upgrades needed for integrating the output of previously approved and variously located wind generation projects.

(Comments of the Minnesota Office of Energy Security, Docket No. IP6830/CN-09-1110 (April 5, 2010, at 7).

DER's Comments were perhaps more perceptive than even originally intended. Paynesville Wind has continued to market the energy from the Project to entities that have a demand for renewable energy due to existing state renewable energy mandates or other environmental regulations. The Permittee was very close to executing a sales agreement during the second quarter of this year, but uncertainty regarding extension of the federal energy production tax credit ("PTC"), coupled with the transmission study and interconnection revisions at MISO and a strained equipment delivery schedule caused the purchaser to delay making a final decision.

As the Commission is aware, the federal production tax credit (22 U.S.C. § 45), currently equal to \$0.022 per kilowatt of electricity produced, will expire on December 31, 2012 unless extended by Congress. There has been continued attention and speculation as to when and under what terms an extension may be adopted by the Congress. This uncertainty in public policy has made it extremely difficult to execute a power contract in the second half of 2012, as contracting parties struggle to determine the correct pricing structure for such transactions. Paynesville Wind expects that the market will adjust to either scenario, once the outcome of the political debate is known. Until then, it will be difficult to finalize a sales agreement. However, Paynesville Wind has continued negotiations with the aforementioned purchaser in an attempt to complete a 2013 contract, should the PTC be extended.

In addition to the PTC uncertainty, Paynesville Wind, like many other Minnesota wind farms, has faced significant challenges navigating the interconnection and study changes at MISO. Although Paynesville Wind came close to executing a provisional GIA last year, it was notified by MISO that the project was subject to restudy and declined to commit to an interconnection without understanding the full extent of potential upgrade costs. In June of this year, however, Paynesville Wind submitted the Project into the new definitive phase planning ("DPP") process and paid the required \$960,000 deposit. This significant investment, \$660,000 of which is non-refundable, reinforces Paynesville Wind's commitment to completing this Project in the near term.

As stated in DER's finding above, Minnesota and other regional utilities continue to have a demand for additional renewable resources in 2016 and beyond, and the Project's 95 MW of wind is well-positioned to meet that need.

GOOD CAUSE TO EXTEND

There is good cause to extend the in-service and other milestone dates for the Project because this request preserves the development status of the Project, a project that meets all statutory requirements for a CN and site permit. Further, the requested amendments to the site permit fit within the four-year window for construction contemplated in Minn. Stat. § 216E.11. By extending the milestone dates, the Commission allows Paynesville Wind to continue to develop and market the Project and lowers development costs by avoiding another permit proceeding. Moreover, granting extension will allow Paynesville Wind to move forward quickly once the PTC and interconnection issues are resolved, which helps ratepayers by increasing market competition within the independent power producers market and allows the Project to move ahead even if the PTC is only extended for one year.

CONCLUSION

The Permittee respectfully requests the Commission (1) determine that the certificate of need in-service date may be extended to December 31, 2014 without rehearing and (2) amend the site permit to extend the timeframe for providing proof of a PPA or other enforceable sales mechanism and start of construction to July 1, 2014 and extend the term of the site permit to 30 years from the date of the amendment.

Dated: October 2, 2012

Respectfully submitted,



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