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December 23, 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 Recommendation of the Office of Energy Security Energy
Facility Permitting Staff (Docket No. IP-6853/WS-10-1240)**

Dear Dr. Haar:

Attached are the Comments and Recommendation of the Office of Energy Security Energy
Facility Permitting (EFP) Staff:

**In the Matter of the Site Permit Application for a 40 Megawatt (MW) Large Wind
Energy Conversion System (LWECS) in Stearns County, Minnesota.**

The attachment also includes a project vicinity map.

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

Sincerely,

Suzanne Lamb Steinhauer
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. IP6843/WS-10-1240

Meeting Date: January 6, 2011Agenda Item # ___

Company: Black Oak Wind, LLC

Docket No. IP6853/WS-10-1240

In the Matter of the Site Permit Application for a 40 Megawatt (MW) Large Wind Energy Conversion System (LWECS) in Stearns County, Minnesota.

Issue(s): Should the Public Utilities Commission accept the Application of Black Oak 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: Suzanne Steinhauer..... (651) 296-2888

RELEVANT DOCUMENTS

LWECS Site Permit ApplicationDecember 6, 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 Minnesota Public Utilities Commission (Commission) and are based on information already in the record unless otherwise noted.

DOCUMENTS ATTACHED

Figure 1 – Project Vicinity Map

Relevant documents and additional information can be found on eDockets (10-1240) or the Commission's Energy Facilities Permitting website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=30578>.

Statement of the Issues

Should the Public Utilities Commission (Commission) accept, conditionally accept, or reject application of Black Oak Wind, LLC (Applicant or Black Oak Wind) for a Large Wind Energy Conversion System (LWECS) site permit as complete for the 40 megawatt (MW) Black Oak Wind Farm (Project) 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 Project?

Introduction and Background

Black Oak Wind has submitted a site permit application to construct the proposed 40 MW Black Oak Wind Farm in Stearns County. Black Oak Wind, LLC, a wholly owned subsidiary of Geronimo Wind Energy, LLC (GWE), will develop, design, construct, own, and operate the Black Oak Wind Farm (Project). Black Oak Wind will construct and own all equipment up to the point of interconnection with the grid. GWE is a Minnesota-based wind energy developer, and has developed the 95 MW Paynesville Wind Farm, also in Stearns County, and two Community Based Energy Development-certified wind farms, the Odin Wind Farm and the Marshall Wind Farm.

Project Location

The proposed site is comprised of 7,064 acres of agricultural land in Ashley and Raymond townships Stearns County, located approximately five miles southwest of Sauk Center. Black Oak Wind, in their LWECS application, states that approximately 6,565 acres are under site control. Depending upon the turbine model selected and final layout, approximately 13.5 to 20 acres would be converted to turbines and associated infrastructure.

Project Description

Black Oak Wind is considering three turbine models; depending upon the actual turbine model selected the Project may be comprised of 26 General Electric 1.6 xle 1.6 MW turbines, 23 Vestas V90 1.8 MW turbine, or 14 Vestas V112 3.0 MW turbine. Depending upon turbine models selected, towers would range from 262 to 328 feet (80 to 100 meters), with rotor diameters of 270 to 367 feet (82.5 to 112 meters), for an total height of 397 to 492 feet (121 to 150 meters). The project would also require the following associated facilities as identified in the permit application:

- Pad mount transformers, depending upon the turbine model selected
- Electric feeder and collection lines
- Supervisory Control and Data Acquisition (SCADA) communication lines
- A project substation
- Access roads
- One permanent meteorological tower with potential for a SODAR or LIDAR unit

- An operations and maintenance facility

The Project would interconnect with the electrical grid at Great River Energy's Black Oak Substation. The applicant intends to seek a permit from Stearns County for a 69 kV transmission line to connect the Project Substation with GRE's Black Oak Substation.

Regulatory Process and Procedures

Pursuant to the Minnesota Wind Siting Act, a site permit from the Commission is required to construct a LWECS, which is any combination of a wind charger, windmill, or wind turbine and associated facilities with a combined nameplate capacity of five MW or more that converts wind energy to electric energy. The rules to implement the permitting requirement for LWECS are found in Minnesota Rules 7854.0100 to 7854.1500. The applicant filed an application with the Commission for a LWECS site permit on December 6, 2010. Under Minnesota Rule 7854.1000, subpart 2, the Commission has 180 days to reach a final permit decision from the date an application is accepted.

Certificate of Need

Black Oak Wind notes in its application that a certificate of need from the Commission for a large electric power generating plant is not required, as the project is less than 50 MW in size and, therefore, does not meet the definition of large energy facility in Minnesota Statute 216B.2421.

Site Permit Application Contents

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

Application Acceptance

Application acceptance is guided by Minnesota Rule 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 after the Commission's acceptance of a LWECS site permit application, the applicant is required to provide notice of the application. The notice is to be provided to the county board and each city council and township board in each county where the LWECS is proposed to be located and published in a newspaper of general circulation in each county. This notice is also published on eDockets and the Commission's Energy Facility Permitting website. In practice this notice is developed by the applicant, with assistance from EFP staff to ensure that the notice meets the requirements and intent of Minnesota Rule 7854.0600. In recent practice, the notice also identifies a comment period within which interested persons may comment on the application and on issues that should be considered in developing a draft site permit for the Project prior to the Commission's preliminary decision on whether a permit may be issued.

As a part of the notice requirements of Minnesota Rule 7854.0600, the applicant must provide a copy of the application to each landowner within the proposed site and to anyone upon request. The applicant is

also required to distribute the application to the Minnesota Historical Society, the regional development commission(s), the auditor of each county, and the clerk of each city and township within 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 (Minnesota Rule 7854.0600, subpart 3). 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 copies of the application along with a cover memo 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) that may have permitting or review authority over the project.

Public Advisor

Minnesota Rule 7854.0700 requires the Commission to designate a staff person to act as the public advisor on the project upon acceptance of the site permit application. The Commission can authorize EFP to name a staff member as the public advisor or assign a Commission staff member.

Preliminary Determination on Draft Site Permit

In accordance with Minnesota Rule 7854.0800, the Commission shall make a preliminary determination on whether a permit may be issued or should be denied within 45 days after acceptance of the application. 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 authorize a person to construct a 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. EFP staff anticipates requesting Commission consideration of issuance of a draft site permit for this project in February, 2011.

Public Participation Process

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

- the applicant's contact information;
- a description of the proposed project, including a proposed site map;
- locations where the permit 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;
- the time and place of the public information meeting conducted by EFP staff;
- the date on which the comment period terminates;
- a statement that during the comment period any person may submit comments to the Commission on the draft site permit;
- a statement that a person may request a contested case hearing on the matter; and
- a brief description of the procedures for reaching a final decision on the permit application.

Notice of draft site permit availability is sent to all persons or agencies that received a copy of the permit application, is published in the *EQB Monitor* and in the county newspaper(s) where the project is proposed, and is posted on eDockets and on the Commission's Energy Facility Permitting website.

Public Meeting

A public meeting will be held at a convenient location in the vicinity of the proposed LWECS project. The meeting will be held after the LWECS application and draft site permit have been distributed to interested persons and governmental agencies. The meeting will provide the public an opportunity to learn about the proposed project and the Commission's role in review and approval of LWECS and to ask questions of the applicant and EFP staff. The meeting is also an opportunity for the public to offer comments on the permit application and draft site permit, which serve as the environmental documents for the project.

Public Comment Period

A minimum 30-day public comment period, commencing with the notice of the draft site permit availability in the *EQB Monitor*, will afford any interested person an opportunity to submit comments on either the site permit application or the draft site permit. If necessary, the Commission may extend the public comment period to provide 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.

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. The Stearns County Board amended its ordinance governing Wind Energy Conversion Systems on December 14, 2010. 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. In its application the Applicant identified Stearns County's standards that were in force when the application was submitted and states that it will voluntarily meet the county's more stringent setback requirements where "feasible and reasonable."

STAFF ANALYSIS AND COMMENTS

The application has been reviewed by EFP staff pursuant to the requirements of Minnesota Rules Chapter 7854. The application provides the information required by Minnesota Rule 7854.0500 in a format that all members of the public can access. Acceptance of the Application 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. In addition, staff is requesting that the Applicant make certain changes to the application text and maps before distributing the application. In particular, staff would like the Applicant to incorporate the more stringent standards adopted by Stearns County on December 14, 2010, after the application was filed, to provide current information for comment, and to correct the size of the High Voltage Transmission Line identified in the maps from 345 kV to 500 kV. For purposes of clarity, the amended application should include the date of eFiling.

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 for interested persons to comment on the application and on issues that should be considered in developing a draft site permit for the Project.

Minnesota Rules, part 7829.3200 allow the Commission to 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.

EFP staff believes the conditions for a variance are met in this case. 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. EFP practice has, over the past year, inserted an additional opportunity for members of the public and governmental agencies to comment on the site permit application, prior to the Commission's preliminary determination on whether a site permit may be issued. EFP staff finds that allowing a reasonable comment period and an opportunity to review any comments received and, where appropriate, incorporating them in the draft site permit considered by the Commission within 45 days can be difficult. Second, granting the variance would not adversely affect the public interest. The public interest would be better served by allowing adequate opportunity for comments on the application; public interest in other wind projects in Stearns County had been high. 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 application as complete, with the condition that Black Oak Wind, LLC will provide additional information as requested by the Commission and the Office of Energy Security Energy Facility Permitting staff for the Black Oak Wind Farm project.
2. Reject the application as incomplete and issue an order indicating the specific deficiencies to be remedied before the application can be accepted.
3. Find the application complete upon the submission of supplementary information.
4. Make another decision deemed more appropriate.

B. Public Advisor

1. Authorize the Office of Energy Security Energy Facility 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.

D. Certificate of Need

1. Based on the information in the record to date, find that a certificate of need is not required.
2. Make no findings regarding the certificate of need.
3. Make some other decision deemed more appropriate.

Energy Facility Permitting Staff Recommends: Options A1, B1, C1, and D1.

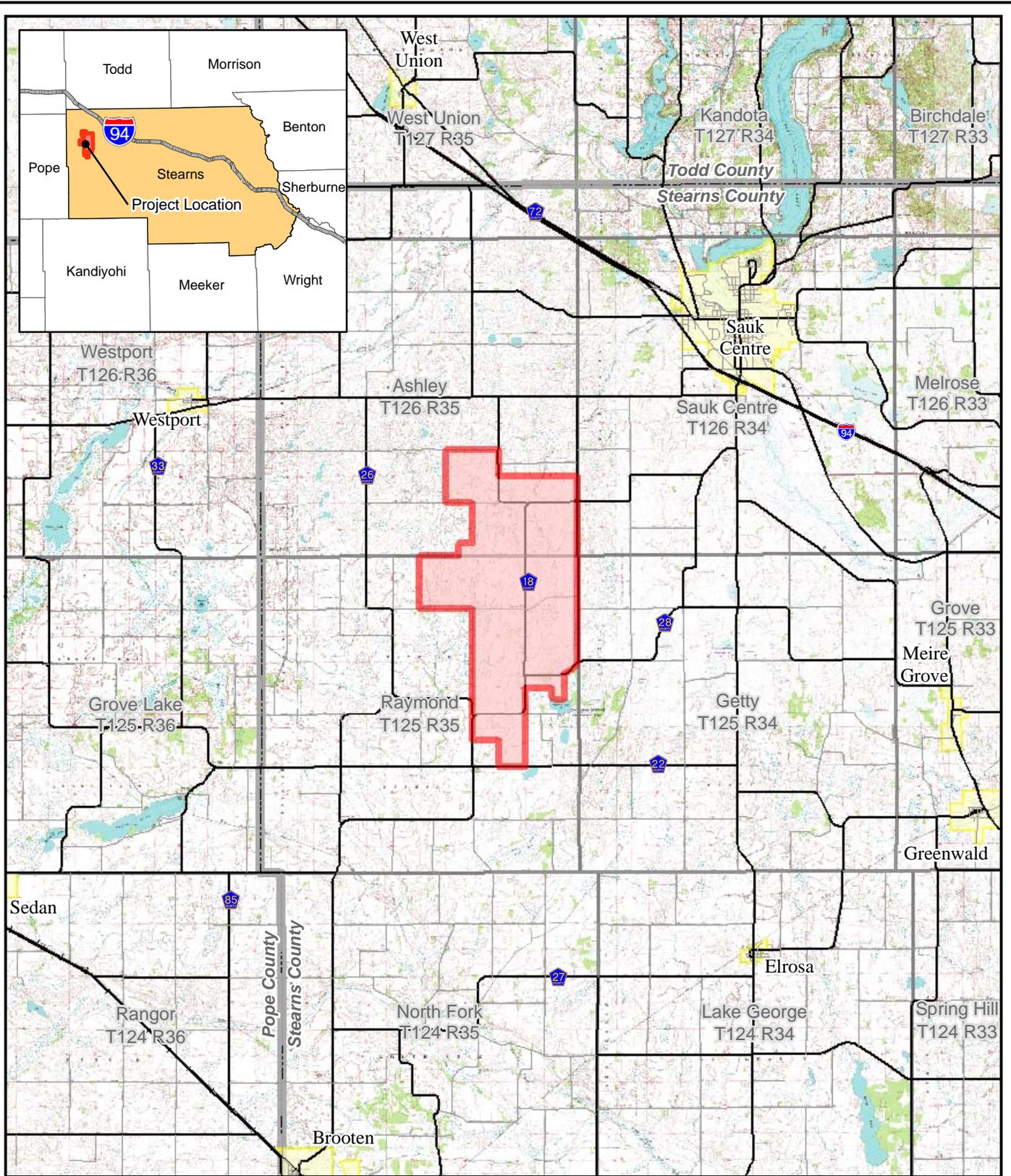


Figure 1-1
Project Vicinity Map

Black Oak Wind Farm
Stearns County, MN



- Project Boundary
- Cities
- Townships

