

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Vice Chair
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In the Matter of the Application of Prairie Wind Energy, LLC for a Certificate of Need for the 100 MW Wind Project in Otter Tail County

ISSUE DATE: March 19, 2012

DOCKET NO. IP-6844/CN-10-429

ORDER GRANTING CERTIFICATE OF NEED AND DENYING REQUESTS FOR CONTESTED CASE PROCEEDINGS

PROCEDURAL HISTORY

I. Application for Certificate of Need

On November 29, 2010, Prairie Wind Energy, LLC (Prairie Wind) filed an application for a Certificate of Need and a Route Permit for construction of a 100 megawatt wind project in Otter Tail County (Project).

On December 29, 2010, the Department of Commerce (Department) filed comments on the completeness of the Petition recommending that the Commission find the application to be complete pending the submission of additional information.

On February 11, 2011, the Commission issued its Order finding the certificate of need application for the Project complete and initiating an informal review process.

On February 14, 2011, the Commission issued a Notice of Comment Periods establishing comment and reply deadlines of March 31, 2011, and April 29, 2011, respectively.

On March 31, 2011, the Department provided comments on the merits of the application.

On May 5, 2011, the Applicants filed an *Application for Site Permit*, Docket No. IP-6844/WS-10-438.

On May 20, 2011, the Department issued its Environmental Report Scoping Decision.

On September 6, 2011, the Department issued its Environmental Report on the Project.

On October 4, 2011, an evening public hearing was held on the proposed Project in Parkers Prairie.

On November 9, 2011, the Administrative Law Judge submitted a Summary of Public Comment.

II. Request for Contested Case Proceeding

On October 4, 2011, a public hearing was held on the proposed Project in Parkers Prairie. At the public hearing, an attendee, Robert Pruess, made a general verbal request for a contested case proceeding and submitted a letter with a list of issues he believed needed further development.

By letter dated October 11, 2011, Claudia Liljegren requested a contested case proceeding on a list of siting related issues.

On October 13, 2011, a letter was received from James Cronk requesting a contested case hearing.

On October 19, 2011, Prairie Wind filed a response to the requests for contested case proceedings.

On February 16, 2011, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

III. Proposed Project

Prairie Wind is owned by eight individual Minnesota residents. The Project includes constructing and operating a large wind energy conversion system of up to 100 megawatts in Otter Tail County. Prairie Wind has stated that the Project will qualify as a Community Based Energy Development (C-BED) project under Minn. Stat. § 216B.1612.

The Project will be located in southeastern Otter Tail County, approximately one mile from Parkers Prairie. A majority of the Project will be located in the townships of Parkers Prairie and Elmo. The total area of the Project will be 23,921 acres located predominantly on agricultural land with relatively low population density.

Prairie Wind has been working with PlainStates Energy for development, construction, operation, and management of the Project. PlainStates Energy has no ownership interest in the Project. Prairie Wind is investigating the possibility of a power purchase agreement for the long-term sale of some or all of the energy from the Project.

IV. Legal Standard for a Certificate of Need

A. The Initial Certificate of Need Factors

As initially enacted, the certificate of need statute identified eight factors for the Commission to consider in evaluating the need for a proposed large energy facility¹ and directed the Commission

¹ Minn. Stat. § 216B.243, subd. 3.

to “adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to the section.”²

The statute also prohibited the Commission from granting any certificate of need unless the application demonstrated that the need for electricity cannot be met more cost effectively through energy conservation and load-management.

B. The Rules

In 1983, the Commission, in compliance with its statutory obligation to establish assessment of need criteria, adopted the certificate of need rules, Minn. Rules, Chapter 7849. One of those rules, Minn. Rules, pt. 7849.0120, addressed the eight factors identified in the statute and directed the Commission to issue a certificate of need when the applicant demonstrates:

- (A) the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant’s customers, or to the people of Minnesota and neighboring states;
- (B) a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record;
- (C) by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health; and
- (D) the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

C. Additional Statutory Requirements

Subsequent to the adoption of the rules, Minn. Stat. § 216B.243, subd. 3, was amended to add four additional factors for the Commission to evaluate in assessing need:

9) with respect to high-voltage transmission lines, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of the transmission system or lower cost for electric consumers in Minnesota;³

10) whether the applicant or applicants are in compliance with applicable provisions of sections 216B.1691 and 216B.2425, subdivision 7, and have filed or will file by a date certain an application for certificate of need or for certification as a priority electric transmission project under section 216B.2425 for any transmission facilities or upgrades identified under section 216B.2425, subdivision 7;⁴

² Minn. Stat. § 216B.243, subd. 1.

³ Minn. Stat. § 216B.243, subd. 3(9).

⁴ Minn. Stat. § 216B.243, subd. 3(10).

11) whether the applicant has made the demonstrations required under subdivision 3a;⁵ and

(12) if the applicant is proposing a nonrenewable generating plant, the applicant’s assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating cost associated with that risk.⁶

V. The Department’s Comments and Environmental Report

A. The Department’s Comments on the Merits of the Application

In its comments filed March 31, 2011, the Department examined the application for a certificate of need with respect to criteria established in statute and rule and explained why it believed the application met those criteria. An itemization of the criteria addressed and the Department’s recommendations regarding the criteria follows:

Statutory Criteria: Minn. Stat. § 216B.243	Where Addressed in these Comments	OES’s Statement
Minn. Stat. § 216B.243, subd. 3 (9)	N/A	The proposed Project is not a transmission line.
Minn. Stat. §§ 216B.243, subd. 3a and 216B.2422, subd. 4	Section II, B, 2 Page 6	Minnesota Statutes indicate a clear preference for renewable facilities. The proposed facility meets that preference.
Minn. Stat. § 216B.2426	Section II, C, 3 Page 9	No proposals for distributed generation as an alternative to the proposed Project have been filed in this proceeding. Potential buyers of the proposed Project’s output should have an incentive to use the lowest cost resource available, including distributed generation. The OES concludes that the requirement to consider distributed generation has been met.
Minn. Stat. § 216B.1694, subd. 2 (a) (5)	Section II, C, 4 Page 9	This statute does not apply since the proposed facility is not a fossil-fuel-fired generation facility.
Minn. Stat. §§ 216B.243, subd. 3 (10) and 216B.1691	Section II, E, 3 Page 11	Given that the Applicant has no retail customers Minnesota, the OES concludes that this statute does not apply.
Minn. Stat. § 216B.243 subd. 3 (12)	Section II, E, 4 Page 12	In this case, the applicant is proposing a renewable generation facility. Therefore, this statute does not apply.

⁵ Minn. Stat. § 216B.243, subd. 3(11).

⁶ Minn. Stat. § 216B.243, subd. 3(12).

Minn. Stat. §§ 216B.243, subd. 3 (10) and 216B.2425, subd. 7	Section II, E, 5 Page 12	Since Minnesota Statutes, section 216B.2425 is applicable only to entities that own or operate electric transmission lines in Minnesota, this statute does not apply in this proceeding.
Minn. Stat. §§ 216B.243, subd. 3 and 216B.243, subd. 3 (8)	Section II, B, 3 Page 6	The Applicant does not have retail customers and does not operate any conservation programs. It is unlikely that the regional needs for wind energy could be met through conservation programs.
Minn. Stat. § 216H.03	Section II, C, 6 Page 13	Since wind energy projects do not produce carbon dioxide emissions the OES concludes that the proposed Project does not violate this statute.

In addition, the Department addressed the criteria established in Minnesota Rules, part 7849.0120, which reiterate the criteria established in Minnesota Statutes, section 216B.243, subd. 3 (1) – (8):

Regulatory Criteria: Minn. Rules, Part 7849.0120	Where Addressed in These Comments	The OES’s Statement
Subpart A (1)	Section II, A, 1, a Page 13	Considering the significant size of the need for renewable energy in the region, the OES concludes that the Applicant’s forecast of the need for the renewable energy expected to be produced by the proposed Project is reasonable.
Subpart A (2)	Section II, B, 3 Page 6	The Applicant does not have retail customers and does not operate any conservation programs. It is unlikely that the regional needs for wind energy could be met through conservation programs.
Subpart A (3)	Section II, E, 2 Page 11	The Applicant states that any promotional activities it may engage in will not be directed toward increasing demand. Therefore, the OES concludes that this subcriterion has been met.
Subpart A (4)	Section II, C, 1, a Page 7	Current and planned facilities not requiring a CN have not been demonstrated to be more reasonable than the proposed Project.
Subpart A (5)	Section II, D Page 10	The general site and expected turbine placements minimize the proposed Project’s effect on land use and enable the use of an existing transmission line.
Subpart B (1)	Section II, B, 1 Pages 4 and 5	The OES concludes that the proposed Project’s size is not excessive and the type and timing are reasonable.

Subpart B (2)	Section II, C, 1, b Pages 7 and 8	Wind energy resources are cost effective when compared with other renewable resources.
Subpart B (3)	Section II, C, 1, c Page 8	Comparing the effects of the proposed Project with another wind project of this size is not likely to result in significant differences.
Subpart B (4)	Section II, C, 2 Page 8	The proposed Project is expected to be available at least 97 percent of the time and have a capacity factor of 40 percent. The OES concludes that this subcriterion has been met.
Subpart C (1)	Section II, A, 1, b Page 4	The proposed Project could help MN meet its energy needs while supporting the state's renewable energy and greenhouse gas emissions-reduction goals.
Subpart C (2)	Section II, D Page 10	The OES relies on its Environmental Report for its socioeconomic analysis.
Subpart C (3)	Section II, D Page 10	The OES relies on its Environmental Report for its socioeconomic analysis.
Subpart C (4)	Section II, D Page 10	The OES relies on its Environmental Report for its socioeconomic analysis.
Subpart D	Section II, E, 1 Page 11	The OES has no reason to believe that the Applicant will fail to comply with the requirements of the listed federal and state agencies and local and tribal governments.

Having analyzed the standards established in Minn. Stat. § 216B.243 and Minn. Rules, part 7849.0120, the Department recommended that the Commission issue a certificate of need to Prairie Wind for the Project.

B. The Department's Environmental Report

In response to the scoping decision, the Department prepared and filed an Environmental Report on September 6, 2011 analyzing the potential impacts associated with the proposed Project. The Environmental Report also analyzed the impacts of the following alternatives to the Project: (1) a 100 megawatt wind generation project sited elsewhere in Minnesota; (2) a 38.5 megawatt biomass plant, and (3) a "no build" alternative. Sections 4 and 5 of the Environmental Report evaluated these alternatives in detail to determine feasibility and availability. Section 6 of the Environmental Report examined the human and environmental impacts of the Project.

VI. Request for Contested Case Proceedings

During the public comment period for the certificate of need and site permit applications, three members of the public (petitioners) requested contested case proceedings. Two of the petitions were filed with the Office of Administrative Hearing following the public meeting for the Project. One of the petitioners orally requested a contested case proceeding at the public meeting held on October 4, 2011.

VII. Commission Action

At the time of a final decision on a certificate of need application, the Commission will determine whether the Environmental Report, and the record supporting the Report, address the issues identified by the Scoping Decision issued under Minn. Rules, part 7849.1800, subp. 7. The Commission has reviewed the Environmental Report and will find that the report and supporting record adequately address the issues identified by the Scoping Decision.

The Commission has reviewed the Department's comments and will accept the Department's findings and recommendations. The Commission has considered all the factors identified in statute and rule and will grant Prairie Wind a certificate of need.

The Commission fully considered the three requests for contested case proceedings on the certificate of need application. The Commission recognizes the importance of public comment and input in decisions made by this Commission. These three requests, however, do not identify any material fact that is contested or any material fact that did not received adequate consideration in the record. Instead, the requests identify issues that do require careful analysis and consideration, but do not require formal evidentiary proceedings. The Commission will deny the requests for contested case proceedings because contested proceedings would not aid the Commission in making a final determination on the Project.

Based on the record, the Commission makes findings on these four points:

First, based on a consideration of the factors set forth in Minn. Rules, part 7849.0120(A), the Commission concludes that denying the application would likely harm the future adequacy, reliability, or efficiency of the energy supply to Prairie Wind, Prairie Wind's customers, or to the people of Minnesota and neighboring states.

Second, based on a consideration of the factors set forth in Minn. Rules, part 7849.0120(B), the Commission concludes that a more reasonable and prudent alternative to the Project has not been demonstrated by a preponderance of the evidence on the record.

Third, based on a consideration of the factors set forth in Minn. Rules, part 7849.0120(C), the Commission concludes that the preponderance of the evidence in the record demonstrates that the Project will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health.

Fourth, based on a consideration of the factors set forth in Minn. Rules, part 7849.0120(D), the Commission concludes that the record does not demonstrate that the design, construction, or operation of the Project, or a suitable modification of the Project, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

ORDER

1. The Commission hereby finds that the Environmental Report for the Project adequately addresses the Scoping Decision of the Department.

2. The Commission finds that the Prairie Wind Energy, LLC has met the statutory and rule criteria for a certificate of need and therefore grants a certificate of need for the 100 MW Wind Project in Otter Tail County.
3. The Commission denies the requests for contested case proceedings.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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