



**Energy Facility Permitting**  
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November 22, 2011

Dr. Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
127 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

**RE: Comments and Recommendations of the Department of Commerce Energy Facility Permitting Staff**  
**Docket No. IP-6855/WS-11-608**

Dear Dr. Haar:

Attached are the comments and recommendations of the Department of Commerce Security Energy Facility Permitting (EFP) staff in the following matter:

**In the Matter of the Site Permit Application of Ellerth Wind LLC for a 98.9 MW Large Wind Energy Conversion System in Marshall County**

Project Location Map and Existing Wind Turbine Map are included in the Comments and Recommendations.

The site permit application was re-filed on November 4, 2011 by:

Brett O'Connor, Operation Manager  
Ellerth Wind LLC  
381 Rue Notre-Dame West  
Suite 102  
Montreal, QC, H2Y

EFP staff recommends accepting the application as complete and authorizing EFP staff to name a public advisor. EFP staff is available to answer any questions the Commission may have.

Sincerely,

A handwritten signature in cursive script that reads "Larry B. Hartman".

LARRY B. HARTMAN  
Energy Facility Permitting

LBH/ja  
Attachment



**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION  
COMMENTS AND RECOMMENDATIONS OF THE  
DEPARTMENT OF COMMERCE  
ENERGY FACILITY PERMITTING STAFF**

DOCKET NO. IP-6855/WS-11-608

Meeting Date: November 29, 2011.....Agenda Item # 3

Company: TCI Renewables for Ellerth Wind LLC

Docket No. **IP-6855/WS-11-608**

**In the Matter of the Site Permit Application of Ellerth Wind LLC for a  
98.9 MW Large Wind Energy Conversion System in Marshall County**

Issue(s): Should the Commission Accept the Site Permit Application of Ellerth Wind LLC for the Ellerth Windpark a 98.9 MW Large Wind Energy Conversion System as complete and assign 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?

EFP Staff: Larry B. Hartman.....651-296-5089

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**Relevant Documents**

Ellerth Wind, LLC, Site Permit Application (re-filed).....November 4, 2011

The enclosed materials are the work papers of the 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) by calling 651-296-0391 (voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1-800-627-3529 or by dialing 711.

## **Documents Attached**

### Figure 1 – Project Vicinity and Site Map

Relevant documents and additional information can be found on eDockets (11-608) or the Commission's Energy Facilities Permitting website at:  
<http://energyfacilities.puc.state.mn.us/Docket.html?Id=32308>

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## **Statement of the Issues**

Should the Public Utilities Commission (Commission) accept, conditionally accept, or reject the application of Ellerth Wind, LLC (Applicant or Ellerth Wind) for a Large Wind Energy Conversion System (LWECS) site permit as complete for the 98.9- megawatt (MW) Ellerth Windpark (Project) in Marshall County? If the application is accepted should the Commission appoint a public advisor?

Should the Commission vary Minnesota Rule, part 7854.0800 to allow more time for a preliminary determination on whether a permit may be issued or should be denied for the Project?

## **Introduction and Background**

Ellerth Wind, LLC, a wholly owned subsidiary of TCI Renewables Limited, has re-filed its site permit application to construct the proposed 98.9 MW Ellerth Windpark in Marshall County. Ellerth Wind initially filed its site permit application (dated June 29, 2011) on eDockets on June 30, 2011. Following the July 2011 government shutdown, EFP staff reviewed the application and informed the Applicant that, in staff's opinion, supplemental information and data was required prior to any Commission action on the permit application. The applicant, in consultation with EFP staff, has made the necessary revisions to its application and re-filed November 4, 2011.

### ***Project Location***

The proposed project site (See Figure 1 attached) is comprised of approximately 33,709 acres of mostly agricultural land in the townships of: Wright (Sections E $\frac{1}{2}$  SE $\frac{1}{4}$  36), West Valley (S1/2 30, 31-35), Foldahl (1, 2, 11-13, 24, 25, 36), Marsh Grove (1-13, 19-23, 26-35), Comstock (1), and Viking (2-6) in Marshall County. The applicant represents having site control of approximately 18,870 acres of private land within the project area boundaries, representing 56 percent of the project area, and has agreements for the land required for placement of the actual project.

### ***Project Description***

The site permit application references three proposed turbine models that vary from 1.6 to 2.3 MW in size and includes site layouts for the General Electric 1.6 MW, Vestas 1.8 MW V90, and Siemens 2.3 MW SWT – 101 turbines. The application provides maps illustrating preliminary turbine layouts, sound contour profiles and shadow flicker analysis for these three turbine

models. However, Ellerth also indicates that they may also select a different turbine model than those specified. Regardless of the turbine model selected, the hub heights would range from 80 to 100 meters (262.5 to 328.1 feet) and the rotor diameter from 90 to 101 meters (295.3 to 331 feet).

Ellerth Wind anticipates using up to 61 1.6 MW GE turbines, up to 54 1.8 MW Vestas turbines, or up to 43 2.3 MW turbines to attain a project nameplate capacity of no greater than 98.9 MW. The preliminary site layout is 97.6 MW, based on 61 1.6 MW turbines (as depicted with 9 alternatives on Map 2) in the application. This preliminary layout represents the greatest number of turbines to be considered. Should one of the other turbine models be selected, the number of turbine locations will be reduced to 54 for the Vestas 1.8 MW V90, while the project capacity will be 97.2 MW, and potentially further reduction in turbine locations to 43 for the Siemens 2.3 MW SWT – 101 to meet the nameplate capacity of 98.9 MW. Locations to be dropped will be determined by potential environmental constraints, wind resource considerations, plant optimization and/or construction design optimization. Preliminary turbine locations are subject to relocation based on site conditions or other permitting requirements.

The turbines will be connected by a series of 34.5 kV underground electrical collection cables and communication (supervisory control and data acquisitions (SCADA)) fiber-optic lines. The 34.5 kV feeder lines (overhead or underground) will carry electrical energy from interconnection points to the project substation, where the power will be transformed from 34.5 kV to 115 kV via a new transformer that will deliver electrical energy to the grid on an Otter Tail Power Company 115 kV transmission line.

Other associated facilities will include pad mounted transformers, except for the Vestas V90 that houses the transformer inside of the tower, all weather gravel access roads to the turbines, between one and three permanent free standing meteorological towers and an operations and maintenance facility.

The Applicant's stated goal is to achieve commercial operation in November 2012.

### **Regulatory Process and Procedures**

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. 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.

The Applicant re-filed an application with the Commission for a LWECS site permit on November 4, 2011. Under Minnesota Rule, part 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***

A Certificate of Need (CN) is required for the Ellerth Windpark Project because, as a 98.9 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 (IP-6855/CN-11-112) on May 27, 2011. The Commission accepted the CN Application as complete in its August 24, 2011, Order.

As part of the CN process, public notice was issued and EFP staff conducted an Environmental Report (ER) scoping meeting in Newfolden on November 7, 2011. A comment period is open through November 30, 2011, and a Scoping Decision is expected in December 2011. EFP staff will release an Environmental Report evaluating the human and environmental impacts of the proposed project in the first part of 2012. Once the ER is available, a public hearing will be held by the Office of Administrative Hearings in the project area.

### ***Site Permit Application Contents***

The required contents of a site permit application are specified in Minnesota Rule, part 7854.0500 and described in *Application Guidance for Site Permitting of Large Wind Energy Conversion Systems in Minnesota* prepared by EFP staff in August 2010. These information requirements include applicant background information, certificate of need compliance, compliance with state policy, proposed site maps, wind characteristics, discussion of wind rights, project design including 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, part 7854.0600. The Commission may 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 application acceptance. The notice is to be provided to the county board and each city council and township board in which 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 jointly by the applicant and EFP staff to ensure that the notice meets the requirements and intent of Minnesota Rule, part 7854.0600. In practice, the notice also identifies a comment period in which interested persons may comment on the application prior to the Commission's preliminary decision on whether a permit may be issued.

As a part of the notice requirements of Minnesota Rule, part 7854.0600, the applicant must provide a copy of the application to each landowner within the proposed site.

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, part 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 and 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, part 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, part 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, 2012.

***Public Participation Process***

Public participation in the LWECS site permitting process is guided by Minnesota Rule, part 7854.0900. A public notice of the availability of the draft site permit 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 to 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, published in the *EQB Monitor* and the county newspaper(s) where the project is proposed, and 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***

Marshall County has not assumed 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, and has no ordinances for wind energy conversion systems at this time. In its application it states: "Ellerth Wind is committed to working with the county to address local concerns and obtain applicable local permit, including for example, building permits for the O&M building and substation." Ellerth Wind and Marshall County also intend to formalize a Development Agreement between both parties in relation to the LWECS development activities.

### **EFP Staff Analysis and Comments**

The site permit application has been reviewed by EFP staff pursuant to the requirements of Minnesota Rules Chapter 7854. EFP staff concludes that the application is sufficiently complete for Commission acceptance to allow EFP staff to initiate the review process. The application provides the information required by Minnesota Rule, part 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.

### ***Tolling the Time***

EFP staff is also requesting the Commission vary the procedural requirement of Minnesota Rule, part 7854.0800 that requires a preliminary determination on whether to issue a site permit within 45 days of application acceptance. EFP staff requests this 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 allows 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 few years, 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 believes that 45 days is inadequate to allow 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.

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. Additionally, public interest would be better served by allowing for more timely coordination and sequencing under the CN and site permit procedural requirements, including the possibility of combining the draft permit public meeting, should a draft site permit be issued, with the public hearing in the Certificate of Need Docket.

Third, EFP staff believes that an extension, if granted, would not conflict with standards imposed by law.

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 Ellerth Wind, LLC will provide additional information as requested by the Commission and the Energy Facility Permitting staff for the Ellerth Windpark 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 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.

B.

#### **C. Variance Request**

1. Grant a variance to Minnesota Rule, part 7854.0800 to extend the period for the Commission to make a preliminary determination on whether a draft 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.

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

**FIGURE 1**  
**PROJECT VICINITY AND SITE MAP**

