

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Site Permit Application for a
200 MW Large Wind Energy Conversion
System for the Odell Wind Farm in
Cottonwood, Jackson, Martin, and Watonwan
Counties

ISSUE DATE: November 7, 2013

DOCKET NO. IP-6914/WS-13-843

ORDER FINDING APPLICATION
COMPLETE AND REFERRING
MATTER TO THE OFFICE OF
ADMINISTRATIVE HEARINGS

PROCEDURAL HISTORY

On September 26, 2013, Odell Wind Farm, LLC (Odell) filed a site permit application for a 200 – megawatt wind project in Cottonwood, Jackson, Martin, and Watonwan counties (the Project).

On October 11, 2013, the Department of Commerce Energy Environmental Review and Analysis staff (EERA) filed comments on the completeness of the application.

On October 31, 2013, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

Under Minn. Stat. § 216F.04 and under Minn. R. 7854.0300, a person wanting to build a Large Wind Energy Conversion System (LWECS) must apply to the Commission for a site permit.¹ Because Odell's Project qualifies as an LWECS, Odell is required to file a site permit application.

II. Application Completeness

The EERA reviewed the site permit application for completeness under Minn. R. Ch. 7854 and stated that the application included the information required by Minn. R. 7854.0500, but noted two

¹ Minn. Stat. § 216F.01, subd. 2, defines an LWECS as any combination of wind energy conversion systems with a combined nameplate capacity of 5,000 kilowatts or more.

areas that it believed should be addressed before the preliminary determination on a draft site permit is made:

- the identity of who will conduct the recommended State Historical Preservation Office surveys and when such surveys will be conducted; and
- the submission of final reports of Tier 3 pre-construction surveys, as well as bat acoustic and raptor surveys (anticipated by year-end 2013).

Finally, the EERA recommended that Odell be required to file a post construction fatality survey for the avian and bat protection plan prior to the Commission's decision on a draft site permit.

In response, Odell has agreed to have a trained cultural resource professional complete a cultural and archaeological resources study prior to construction. Further, Odell committed to providing its final 2013 Tier 3 studies by December 31, 2013.

The Commission concurs with the EERA that the application is substantially complete. The Commission will, however, direct Odell to respond to all reasonable requests regarding the project and to facilitate in every reasonable way the continued examination of the issues by the EERA.

III. Referral to the Office of Administrative Hearings

While no person has identified contested issues of material fact or recommended that the case be referred to the Office of Administrative Hearings for contested case proceedings, the Commission finds that it cannot resolve all issues raised by the application on the basis of the record before it. Those issues turn on specific facts that are best developed in proceedings conducted by an Administrative Law Judge. The Commission will therefore refer the matter to the Office of Administrative Hearings for summary proceedings under Minn. R. 7850.3800 to facilitate factual development of the record.

The Commission will also take the steps listed below to ensure adequate development of the record:

- Request that the Administrative Law Judge assigned to this matter emphasize the statutory time frame within which the Commission must make a final decision on the application and strongly encourage the applicant and others to adhere to a schedule that conforms to this timeframe;
- Direct the Commission staff to formally contact relevant state agencies, and request their participation in the development of the record and public hearings;
- Direct Commission staff to consult with the Administrative Law Judge in selecting suitable locations for hearings on the application;
- Request development of the record on whether the proposed project meets the applicable permitting criteria under Minn. Stat. Ch. 216F and Minn. R. Ch. 7854;
- Request the EERA to issue its initial technical analysis before the public hearing to allow for any necessary modifications under project timelines;
- Request the Administrative Law Judge to prepare a report setting forth findings, conclusions, and recommendations on proposed permit conditions and the merits of the project, applying the criteria set forth in statute and rule; and

- Request that the EERA file comments on the merits of the application and the record, including recommendations, as well as modifications to the draft site permit, under timelines set forth by the Administrative Law Judge.

IV. Rule Variance

Under Minn. R., part 7829.3200, the Commission is authorized to vary any of its rules upon making the following findings:

- (1) Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (2) Granting the variance would not adversely affect the public interest; and
- (3) Granting the variance would not conflict with standards imposed by law.

Under Minn. R. 7854.0800, the Commission must make a preliminary determination on whether to issue a site permit within 45 days of accepting an application. To ensure sufficient time to accommodate public input, the Commission will vary the 45-day time line of Minn. R. 7854.0800, making the following findings:

- 1) Enforcing the 45-day time line would impose an excessive burden upon the public, upon parties to the proceeding, and upon the Commission, by jeopardizing the thoroughness of the Commission's decision-making process.
- 2) Varying the 45-day time line would not adversely affect the public interest and would in fact serve the public interest by protecting the Commission's decision-making process.
- 3) Varying the 45-day time line would not conflict with any other standards imposed by law.

Accordingly, the Commission will vary Minn. R., part 7854.0800 to allow additional time for the Commission to make a preliminary determination whether a permit should be issued or denied.

V. Public Advisor

Upon acceptance of an application for a site permit, the Commission is to designate a staff person to act as the public advisor on the project under Minn. R., part 7854.0700. The public advisor is available to answer questions from the public about the permitting process. In this role, the public advisor may not act as an advocate on behalf of any person.

The Commission will designate Tracy Smetana as the public advisor. Her contact information is: Tracy Smetana, Public Advisor, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, Saint Paul, Minnesota 55101-2147. She can be reached by telephone at 651-296-0406 and by email at consumer.puc@state.mn.us.

VI. Project Notice Distribution

Odell is required to provide notice of the application's acceptance by the Commission to a newspaper of general circulation in each county, as well as to each county board, city council, and township board within the project counties, and to each landowner within the site. The Commission will direct Odell to consult with Commission staff and the EERA staff regarding the content and distribution of the notice prior to publication.

ORDER

1. The Commission hereby accepts the application as substantially complete, and directs Odell to respond to reasonable requests regarding the project.
2. Odell shall facilitate in every reasonable way the continued examination of the issues by the EERA.
3. The Commission hereby refers the matter to the Office of Administrative Hearings for development of the record as described herein.
4. The Commission hereby varies Minn. Rule. 7854.0800 to extend the Commission's time period for making a preliminary determination on whether or not a site permit should be issued.
5. Odell shall provide notice of application acceptance to a newspaper of general circulation in each county, as well as to each county board, city council, and township board within the project counties, and to each landowner within the site. Odell shall consult with Commission staff and the EERA staff regarding the content and distribution of the notice prior to publication.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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