

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer  
Marshall Johnson  
Ken Nickolai  
Phyllis A. Reha  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application for a  
Certificate of Need for the Trimont Area Wind  
Farm

ISSUE DATE: December 22, 2003

DOCKET NO. IP-6339/CN-03-1841

ORDER GRANTING EXEMPTION  
REQUESTS IN PART, PERMITTING  
EXPEDITED FILING, ACCEPTING  
APPLICATION AS OF DATE OF  
SUPPLEMENTAL FILING, AND  
REQUESTING PREPARATION OF  
ENVIRONMENTAL REPORT

**PROCEDURAL HISTORY**

On November 18, 2003, Trimont Area Wind Farm, LLC (Trimont or the Company) filed an application for a certificate of need to construct a 100-megawatt wind generation facility in Martin and Jackson Counties. The application included a request for variances from specific data requirements in eight certificate of need rules, on grounds that these requirements did not apply to the proposed facility either because it was a wind facility or because it was not being built by a public utility.

On November 19, 2003, the Commission issued a notice requesting comments on the request for variances and the completeness of the application.

On December 1, 2003, the Company filed a request that the Staff of the Environmental Quality Board (EQB) prepare the environmental report required under the certificate of need rules. On the same date, the Staff of the Environmental Quality Board filed comments suggesting that they prepare that report, in light of pending EQB rules assigning that responsibility to EQB Staff.

On December 1, 2003, the Department of Commerce (the Department) filed comments on the completeness of the application and the request for variances. The Department recommended treating Trimont's requests for variances as requests for exemptions from filing requirements under Minn. Rules 7849.0200. The Department recommended granting most of the requested exemptions and denying others. The Department recommended finding the certificate of need application substantially complete as of the date that Trimont submitted a supplemental filing containing specified information. Finally, the Department recommended varying Minn. Rules 7849.0200, subp. 6, which requires a 45-day interval between filing exemption requests and

filing a certificate of need application, to permit Trimont's application to go forward without delay.

On December 11, 2003, Trimont's filing came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### I. The Proposed Project

Trimont Area Wind Farm is a limited liability company made up of some 40 landowners who between them own approximately 18 square miles of wind-rich land in southwestern Minnesota. The Company submitted the winning bid in a competitive bidding process for renewable generation conducted by Great River Energy (GRE), which was seeking to comply with the legislative mandate requiring good faith efforts to secure 10% of its energy supply from renewable resources by 2015.<sup>1</sup> Great River agreed to purchase the entire output of the proposed 100-megawatt facility.

Trimont proposes to place up to 67 1.5-megawatt turbines on the 18-square-mile parcel, which stretches between Martin and Jackson Counties in southwestern Minnesota. Transmission capacity will be supplied by existing transmission facilities at GRE's neighboring Lakefield Junction Generating Station.

### II. The Exemption Requests

#### A. The Legal Standard

Determining need for large electric generating facilities or large high-voltage transmission lines is a complex, fact-intensive process, and the filing requirements for certificate of need applications are therefore comprehensive and detailed. Because the certificate of need rules apply to a broad range of projects, the rules explicitly permit applicants to request exemptions from filing requirements that are inappropriate in individual cases. Minn. Rules 7849.0200, subp. 6.

The Commission is to grant exemptions when the data requirements at issue (1) are unnecessary to determine need in a specific case; or (2) can be satisfied by submitting documents other than those required in the rules.<sup>2</sup>

#### B. Commission Action

Trimont sought variances, which the Commission will treat as exemption requests, from all or

---

<sup>1</sup> Minn. Stat. § 216B.1691.

<sup>2</sup> Minn. Rules 7849.0200, subp. 6.

part of eight filing rules. Each request will be treated in turn.

1. 7849.0250 (B) – Discussion of alternatives to the proposed facility.

The Commission concurs with the Department that Trimont should be exempted from discussing non-renewable alternatives to the proposed facility, since non-renewable alternatives could not fulfill the proposed facility's purpose of increasing the supply of renewable generation as directed by statute. They are therefore not true alternatives to the proposed facility, and information about them is unnecessary to determine need.

Other renewable options should be discussed, however, since they could fulfill that purpose and are therefore true alternatives to the proposed facility.

2. 7849.0250 (C) – Information on the costs of the proposed facility and alternatives.

The Commission concurs with the Department that Trimont should be exempted from providing cost data on non-renewable alternatives because, as discussed above, nonrenewable facilities are not true alternatives to the proposed facility. Information about nonrenewable alternatives is therefore unnecessary to determine need. The Company should, however, provide cost data on renewable alternatives, and the Commission will so require.

The Commission also concurs that Trimont should be exempted from requirements to provide system-wide data, since it does not have a system.

3. 7849.0270 – Information on the peak demand and annual consumption forecast of the relevant system.

The Commission concurs with the Department that the relevant system in this case is Great River's system and that Trimont has met this requirement by including Great River's resource plan in its filing. The exemption is therefore granted on grounds that the data requirement has been satisfied by submitting a document other than the one required in the rule.

4. 7849.0280 – Information on the applicant's system capacity.

The Commission concurs with the Department that here, too, the relevant system is Great River's, that the required information is in Great River's resource plan, and that Trimont has met this requirement by including Great River's resource plan in its filing. The exemption will therefore be granted on grounds that the data requirement has been satisfied by submitting a document other than the one required in the rule.

5. 7849.0290 – Information on conservation programs and their potential for reducing the need for new generation and transmission facilities.

The Commission concurs with the Department that here, too, it is Great River's conservation programs that are relevant, that the required information is in Great River's resource plan, and that Trimont has met this requirement by including Great River's resource plan in its filing. The exemption will therefore be granted on grounds that the data requirement has been satisfied by submitting a document other than the one required in the rule.

6. 7849.0300 – Information on the consequences of delaying construction of the proposed facility.

The Commission concurs with the Department that Trimont should be granted an exemption from analyzing the consequences of delay on its system – since it has no system – on grounds that the information is not necessary to determine need. The Company should, however, discuss the consequences of delay on Great River's system and the power pool in general.

7. 7849.0320 – Information on large electric generating facilities that could function as alternatives to the proposed facility.

The Commission concurs with the Department that only information on renewable alternatives need be supplied here. Parts C and D, by their terms, relate only to fossil-fuel facilities and are therefore inapplicable. The remaining parts should be addressed to the extent that they apply to renewable alternatives to the proposed facility.

8. 7849.0330 – Information on high-voltage transmission lines that could function as alternatives to the proposed facility.

The Commission concurs with the Department that transmission facilities are not true alternatives to the proposed facility, since the purpose of the facility is to increase the supply of renewable energy. The Commission will therefore grant the exemption, except to the extent that new high-voltage transmission facilities are an integral part of renewable alternatives to the proposed facility.

### **III. Substantial Completeness of the Application**

The Commission is required by statute to act on certificate of need applications within six months of filing,<sup>3</sup> making it impractical to rely on evidentiary proceedings to remedy significant defects or ambiguities in an application. The Commission's rules on the contents of certificate of need applications are therefore detailed and strictly enforced. Under these rules, applications are not accepted until they are substantially complete.<sup>4</sup>

The Commission concurs with the Department of Commerce that Trimont's initial application was not substantially complete due to the absence of the following information:

---

<sup>3</sup> Minn. Stat. § 216B.243, subd. 5.

<sup>4</sup> Minn. Rules 7849.0200, subp. 5.

- a discussion of the effect of economies of scale on the size and timing of the facility, as required under Minn. Rules 7849.0250 A (1);
- adequate information on capital costs per kilowatt hour, as required under Minn. Rules 7849.0250 C (1);
- total costs per kilowatt hour, as required under Minn. Rules 7849.0250 C (6);
- rate impacts on a state-wide basis, as required under Minn. Rules 7849.0250 C (7);
- the major assumptions underlying technical and operational data provided in the application, as required under Minn. Rules 7849.0250 C (9); and
- the effects on Great River Energy of not building the wind farm, as required under Minn. Rules 7849.0340 B (1) to (11).

The Commission also agrees with the Department that the most efficient way to handle the completeness issue is to find the application substantially complete as of the date that the Company submits a supplemental filing containing the missing information. This course of action should eliminate the need for further Commission action on the completeness issue, expediting consideration of the merits of this application.

Similarly, the Commission will by separate Order proceed with referring the case to the Office of Administrative Hearings for contested case proceedings, confident that the Company will continue to cooperate promptly and fully with the regulatory process.

#### IV. 45-Day Interval Between Exemption Request and Application

The Company filed its exemption requests on the same date that it filed its certificate of need application. The rules require a 45-day interval between filing exemption requests and filing a certificate of need application.<sup>5</sup> The Department recommended varying the rule to prevent unnecessary delay, in light of clear legislative directives to increase utilities' reliance on renewable sources of energy.

Under Minn. Rules 7829.3200, the Commission can vary any of its rules upon making the following findings:

5. Enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
6. Granting the variance would not adversely affect the public interest; and
7. Granting the variance would not conflict with any standards imposed by law.

The Commission will vary the rule requiring the 45-day interval, based on the following findings.

1. Enforcing the 45-day interval would impose an excessive burden on the applicant by jeopardizing the targeted in-service date of the proposed facility.

---

<sup>5</sup> Minn. Rules 7849.0200, subp. 6.

2. Granting the variance would not adversely affect the public interest, but would serve the public interest by expediting consideration of a project that falls within a class of projects the Legislature has directed regulators and utilities to promote.
3. Granting the variance would not conflict with any standards imposed by law.

The Commission will therefore vary the requirement for a 45-day interval between the filing of exemption requests and the certificate of need application to which they relate.

#### V. The Environmental Report

The rules of the Environmental Quality Board (EQB) require an environmental report in certificate of need cases.<sup>6</sup> The current EQB rules require the Commission to prepare the report,<sup>7</sup> but those rules will be replaced in a matter of weeks with recently-adopted rules assigning that responsibility to the EQB.<sup>8</sup> All parties recommend that the Commission ask the EQB Staff to prepare the environmental report in this case, consistent with the new rules.

The Commission concurs with the parties that asking the EQB Staff to prepare the environmental report would best serve the interests of the public, the parties, and this proceeding. Asking the EQB Staff to prepare the report will not only avoid the ambiguity that could result from new rules going into effect in the course of this case, but will also ensure that environmental issues receive the informed development anticipated by both agencies' rules.

### **ORDER**

1. The Commission grants Trimont Area Wind Farm, LLC exemptions from specific data requirements in the certificate of need rules as set forth above.
2. The Commission varies Minn. Rules 7849.0200, subp. 6 to permit the contemporaneous filing of Trimont's certificate of need application and its request for exemptions from specific data requirements of the certificate of need rules.
3. The Commission accepts Trimont's certificate of need application as substantially complete as of the date that it makes a supplemental filing containing the items listed below:
  - a discussion of the effect of economies of scale on the size and timing of the facility, as required under Minn. Rules 7849.0250 A (1);
  - adequate information on capital costs per kilowatt hour, as required under Minn. Rules 7849.0250 C (1);

---

<sup>6</sup> Minn. Rules 4410.7000 *et seq.*

<sup>7</sup> Minn. Rules 4410.7100.

<sup>8</sup> Proposed rules 4410.7010 to 7070, adopted by the Environmental Quality Board on November 20, 2003.

- total costs per kilowatt hour, as required under Minn. Rules 7849.0250 C (6);
  - rate impacts on a state-wide basis, as required under Minn. Rules 7849.0250 C (7);
  - the major assumptions underlying technical and operational data provided in the application, as required under Minn. Rules 7849.0250 C (9); and
  - the effects on Great River Energy of not building the wind farm, as required under Minn. Rules 7849.0340 B (1) to (11).
4. The Commission asks the Staff of the Environmental Quality Board to prepare the environmental report on this application in accordance with the rules recently adopted by the Environmental Quality Board.
  5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice) or 1-800-627-3529 (TTY relay service).