

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application for a
Certificate of Need and Site Permit for the
High Prairie Wind Farm II Large Wind Energy
Conversion System

ISSUE DATE: March 30, 2007

DOCKET NO. PT-6556/CN-06-1428;
PT-6556/WS-06-1520

ORDER DENYING REQUEST FOR
CONTESTED CASE HEARING, BUT
EXPANDING SCOPE OF PUBLIC
HEARING

PROCEDURAL HISTORY

On October 6, 2006, High Prairie Wind Farm II, LLC (High Prairie) filed a certificate of need application to construct a 100-megawatt wind generation facility in Mower County.¹

On November 22, 2006, High Prairie filed an application for a large wind energy conversion system site permit in connection with the project.²

On December 11, 2006, the Commission issued two orders with respect to the wind generation facility. The Commission: a) accepted the certificate of need application as substantially complete; b) combined the review process for the certificate of need and siting processes where practicable; and c) accepted the site permit application as complete, and made a preliminary determination that a draft site permit could be issued.

On January 17, 2007, a public information meeting on the project was held in Grand Meadow, Minnesota.

¹ Docket No. PT-6556/CN-06-1428 .

² Docket No. PT-6556/WS-06-1520.

The Department of Commerce received three comment letters regarding the wind generation facility. The Department of Natural Resources filed a comment letter on January 31, 2007, which provided guidance on minimization of impacts to wildlife species possibly present in the project area.

Ronald J. Lee, a resident in the vicinity of the project, filed two letters, one of which included a request for a contested case hearing.

On March 15, 2007, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

The question posed in this proceeding is whether the Commission should order a contested case proceeding based on the request submitted by Ronald J. Lee.

Minn. Rules 4401.0550, subp. 5 provides:

- A. Any person may request in writing that a contested case hearing be held on an application for a site permit for a proposed large wind energy conversion system project. . . .
- B. Following a request for a contested case hearing the commission shall order a contested case hearing if it finds that the person requesting the contested case hearing has raised a material issue of fact *and* that holding a hearing would aid the commission in making a final determination on the permit application.

(Emphasis added).

Ronald Lee identified a list of topics he asserted should be addressed through a contested case hearing. The Commission, after consideration, does not find that Mr. Lee has raised a material issue of fact sufficient to justify a contested case proceeding. Several of the matters raised are outside the scope of the wind permitting process.³ Other issues raised, such as setbacks and noise levels, can be addressed through the public hearing. In addition, the individual negotiations of the company with affected landowners are not within the scope of the wind permitting process.

Further, Mr. Lee's contested case hearing request has failed to identify *contested* material factual issues relative to a site permit that would aid the commission in making a final determination on the permit application, and would therefore require resolution in a contested case proceeding. Mr. Lee has provided no indication in his request that facts are, indeed, contested. Nor is it

³ Issues related to compensation, projected economic impact on state and local government units, government incentives offered, eminent domain issues are generally outside the scope of the wind permitting process.

apparent that holding a contested case hearing would resolve the issues he has raised. Finally, Mr. Lee has not provided the Commission with any indication that an evidentiary hearing with full due process protections would be helpful or serve the public interest.

The Commission concurs, however, on the importance of hearing the concerns of local residents during the certificate of need and siting and permitting process. The Commission will therefore act to ensure that a forum exists to address the issues relating to siting and permitting raised by Mr. Lee, and holds that these issues can be addressed in the public hearing to be held in the certificate of need proceeding.

ORDER

1. The Commission denies the request for a contested case hearing.
2. The Commission expands the scope of the public hearing to be held on the certificate of need proceeding to include issues related to siting and permitting.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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