

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Dan Lipschultz	Commissioner
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John A. Tuma	Commissioner

In the Matter of the Application of Dodge County Wind, LLC for a Certificate of Need for the 170 MW Dodge County Wind Project and Associated Facilities in Dodge, Steele, and Olmsted Counties, Minnesota

ISSUE DATE: December 5, 2019

DOCKET NO. IP-6981/CN-17-306

In the Matter of the Application of Dodge County Wind, LLC for a Site Permit for the 170 MW Dodge County Wind Project and Associated Facilities in Dodge and Steele Counties, Minnesota

DOCKET NO. IP-6981/WS-17-307

In the Matter of the Application of Dodge County Wind, LLC for a Route Permit for the 345 kV High-Voltage Transmission Line Associated with the Dodge County Wind Project in Dodge and Olmsted Counties, Minnesota

DOCKET NO. IP-6981/TL-17-308

ORDER ALLOWING WITHDRAWAL OF ROUTE PERMIT APPLICATION, SUSPENDING CERTIFICATE OF NEED AND SITE PERMIT PROCEEDINGS, AND ALLOWING REFILEING

**PROCEDURAL HISTORY**

On June 29, 2018, Dodge County Wind, LLC (Dodge County or Applicant) filed a certificate of need application, a site permit application, and a high-voltage transmission line (HVTL) route permit application for the proposed 170 megawatt (MW) Dodge County Wind Project to be located in Dodge, Steele, and Olmstead Counties.<sup>1</sup> Dodge County stated that it had a power purchase agreement (PPA) with the Minnesota Municipal Power Agency to purchase the full output of the project for a 30-year term.

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<sup>1</sup> The certificate-of-need application was subsequently amended and refiled on January 18, 2019, and September 6, 2019. The site permit application was amended and refiled on January 10, 2019, September 6, 2019, and October 15, 2019. The November 14, 2019 Commission Briefing Papers for this proceeding contain the full procedural history of these dockets, which can also be found in e-dockets.

On November 1, 2018, the Commission referred the three matters to the Office of Administrative Hearings (OAH) for joint public and contested case proceedings; authorized combined environmental review of the applications; and requested the preparation of an environmental impact statement (EIS).

On July 22, 2019, Laborers' International Union of America (LIUNA) filed a motion to compel discovery and extend deadlines in the matters referred to the OAH. On August 7, 2019, the Administrative Law Judge (ALJ) issued an order denying LIUNA's motion, concluding that LIUNA did not show that the requests were necessary to the presentation of the case. The ALJ also commented that LIUNA's representation by an unlicensed member of the Minnesota bar might run afoul of Minn. Stat. § 481.02 (the unauthorized practice of law statute).

On August 14, 2019, Dodge County filed a request to withdraw its route permit application. The Company also filed a motion with the ALJ requesting that the ALJ suspend the procedural schedule of the three associated dockets.<sup>2</sup>

On August 29, 2019, the Commission filed a notice requesting that the ALJ certify the matter back to the Commission. On August 30, 2019, the ALJ certified the matter back to the Commission.

In its September 5, 2019 comments, LIUNA filed a request with the Commission asking it to consider the motions it made in the administrative proceeding to compel discovery and to reverse the ALJ's prohibition on representation of LIUNA by a non-attorney.

On September 27, 2019, the Department of Commerce Division of Energy Resources, the Department of Commerce Energy Environmental Review and Analysis Unit (EERA), Dodge County, and LIUNA filed initial comments. Dodge County and LIUNA filed reply comments on October 4 and October 7, 2019, respectively.

On November 14, 2019, the Commission met to consider the matters.

## **FINDINGS AND CONCLUSIONS**

At the Commission meeting, Dodge County indicated that the planned energy off-taker for the transmission line route permit had rejected the project due to lack of viability. Dodge County also stated that it agreed with the Commission staff's proposal for the Commission to reject the revised certificate of need and site permit applications, suspend the current proceedings, and require Dodge County to refile a comprehensive and complete application for a certificate-of-need and site permit with a proposal for associated facilities to interconnect the project to the transmission system.

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<sup>2</sup> Dodge County indicated that it had learned from an interconnection analysis conducted by the Midcontinent Independent System Operator that the project would incur significant interconnection costs. Dodge County also stated that the off-taker for the PPA had rejected the deal due to the current interconnection issues.

In light of the proposed Commission action, LIUNA withdrew its motion to compel discovery.

### **COMMISSION ACTION**

Due to the current potentially confusing procedural posture of these matters, which includes three versions of the certificate of need application and four versions of the site permit application, the Commission concurs that it is best to grant Applicant's request to withdraw the route permit application, reject the revised certificate of need and site permit applications, and suspend the current proceedings. This will allow Applicant to refile the matters in a new docket once the issues with the route permit transmission line have been resolved.

Should Applicant desire to proceed with the projects, the Commission will require Applicant to refile comprehensive and complete certificate of need and site permit applications. These filings must include a proposal for associated facilities to interconnect the Dodge County Wind Project to the transmission system.<sup>3</sup>

Finally, while LIUNA has withdrawn its motion to compel in this matter, the Commission will clarify that its applicable statute and rules do not require attorney representation to appear before the Commission. First, the Commission notes that the statute defining the unauthorized practice of law in Minnesota, Minn. Stat. § 481.02, sub. 1, refers solely to representation in court, and not to an appearance in a regulatory proceeding such as appearing before the Commission. Second, the rules governing procedures before the Commission do not require a party to have attorney representation.<sup>4</sup> Third, the OAH rules specifically state that a party need not be represented by an attorney in its proceedings.<sup>5</sup>

### **ORDER**

1. Dodge County Wind, LLC's request to withdraw the high-voltage transmission line route permit application is granted.
2. The Commission rejects Dodge County Wind, LLC's revised certificate of need application, suspends the current proceedings, and will require the applicant to refile a comprehensive and complete certificate of need application that includes a proposal for associated facilities to interconnect the project to the transmission system.

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<sup>3</sup> Due to this course of action, there is no longer a need to address LIUNA's motion to compel discovery.

<sup>4</sup> Minn. Stat. § 216B.16 expressly allows a party to appear in person or by an attorney.

<sup>5</sup> Minn. R. 1400.7100, subp. 5, specifically states that a party need not be represented by an attorney.

3. The Commission rejects Dodge County Wind, LLC's revised site permit application, suspends the current proceedings, and will require the applicant to refile a comprehensive and complete site permit application that includes a proposal for associated facilities to interconnect the project to the transmission system.
4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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