

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: April 15, 2010 Agenda Item # *8

Company: AWA Goodhue Wind, LLC

Docket Nos. IP-6701/CN-09-1186

In the Matter of the Application of AWA Goodhue Wind, LLC for a Certificate of Need for a 78 MW Wind Project and Associated Facilities in Goodhue County

Issue(s): Should the Commission order a contested case proceeding?

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Relevant Documents

Minnesota Rules 7829 Utility Proceeding, Practice Procedure

Minnesota Rules, Chapter 7849 - Certificate of Need for a Large Wind Energy Facility

AWA Goodhue's Certificate of Need Application October 15, 2009
Commission Order Finding Application Complete and Granting Informal Review December 20, 2009
OES Initial Comments February 12, 2010
Goodhue Wind Truth's Request for a Contested Case Hearing February 12, 2010
OES Reply Comments March 29, 2010

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Statement of the Issues

Should the Commission order a contested case hearing as requested by Goodhue Wind Truth?

Procedural History

On October 15, 2009, Goodhue Wind LLC (Goodhue) filed with the Minnesota Public Utilities Commission (Commission) Goodhue's *Request for Exemption from Certain (Certificate of Need) Application Content Requirements and Request for Variance of Time Period for Filing Exemption Request*, in order to obtain a timing variance and exemptions from certain data requirements on Minnesota Rules 7849.

On October 15, 2009, Goodhue filed their *Application for a Certificate of Need, Goodhue Wind Project* (CN Application).

On November 20, 2009, Xcel Energy filed petitions for the approval of two, 39 Megawatt (MW) Power Purchase Agreements¹ (PPAs) from the 78 Megawatt (MW) Goodhue project under the Minnesota Community-Based Energy Development (C-BED) statute, Minn. Stat. §216B.1612.

On December 17, 2009, Goodhue Wind Truth (GWT) filed comments in the CN and PPA dockets noting that the project cannot qualify as a C-BED project and offering a version of the project's Prospectus as evidence.

Also on December 17, 2009, the Commission met to consider whether the requested exemptions and variance should be granted, and if the application should be considered complete. The question of whether the Applicant met the criteria for an exemption from the CN process under Minn. Stat. §216.243 subd. 9 was addressed by the parties; the applicant indicated their preference to follow the CN process.

On December 30, 2009, the Commission issued ORDER FINDING APPLICATION COMPLETE AND INITIATING INFORMAL REVIEW PROCESS.

On January 4, 2010, the Commission issued a notice soliciting comments on the merits of the application.²

Between January 4, 2010 and March 29, 2010 comments were received on the merits of the application and other issues from the applicant, the Office of Energy Security (OES), GWT, and members of the public.

On February 12, 2010, GWT filed the *Petition for Contested Case – Siting, Certificate of Need Docket and Power Purchase Agreement Dockets*.

On March 26, 2010, the applicant filed reply comments on the merits of the application and included a discussion on the contested case hearing request.

¹ The Goodhue Wind Project's 78 MW capacity is divided into two, 39 MW PPAs as there are two interconnection locations for the proposed project, North (Docket 09-1349) and South (Docket 09-1350).

² Initial comments were due February 12, 2010 and replies were due March 12, 2010. OES requested a delay in the reply comment period, which the Commission extended until March 29, 2010.

On March 29, 2010, the OES filed reply comments on the merits of the application and included a discussion on the contested case hearing request.

Project Background

The Goodhue project is a 78 MW facility within Goodhue County. The project area is approximately 33,000 acres of primarily agricultural land, located northwest and south of the city of Goodhue. The project will have between 39, 2.3 MW and 52, 1.5 MW turbines.

Regulatory Procedure

In the December 30, 2009 Order the Commission authorized the use of the informal comment and reply process in lieu of the formal contested case proceeding as the CN matter appeared to be relatively non-controversial. It was determined that the informal review process was an appropriate model to develop the record. The Minnesota Rules regarding the informal certificate of need proceeding are located in Chapter 7829.1200.

During the informal proceeding, a person may request in writing that a contested case be held on an application for a certificate of need. The request should include the issues to be addressed during the proceeding and the reasons a contested case hearing is required to resolve those issues.

Per Minnesota Rule 7829.1000, if the Commission finds that all significant issues have not been resolved to its satisfaction, the Commission shall refer the matter to the Office of Administrative Hearing for a contested case proceeding.

Contested Case Hearing Request

The informal review process allows for concerns regarding the merits of the project to be developed during the initial and reply comment period, in the Goodhue docket comments were received between January 4 and March 29, 2010.

The GWT request for a contested case submitted on February 12, 2010, identified the following items as reasons why a contested case hearing should be held; the issues raised in the petition did not differentiate between the siting, CN, or PPA docket.

As written in the request:

- 1) This project is not what it claims to be, that misrepresentations of turbine sites and wind rights acquisitions have been made. See Exhibit A, MAP presented in record.
- 2) If sited as proposed, it will have an impact on local residences and property that cannot be mitigated. See record of Public Health Impacts of Wind Turbines, Docket 09-845.
- 3) As proposed, this project is not a C-BED project as defined under Minnesota law. See Exhibit B, Prospectus (statements of ownership & interest), Goodhue Wind.
- 4) This project should not be utilized by Xcel Energy or any other buyer for compliance with the Renewable Energy Standard. See staff briefing papers, 09-1186; and
- 5) This project does not take into account all costs associated with this project, particularly transmission interconnection.

Positions

AWA Goodhue Wind LLC

In their March 26, 2010 reply comment on the merits of the application, Goodhue addressed the contested case hearing request³ (excerpted, footnotes omitted):

To move to a contested case proceeding, the requesting party has the burden to demonstrate the existence of material disputed facts, and that those facts would aid the Commission in making a decision. Simply raising questions or posing possible alternatives is not enough.

Here, GWT simply raises questions regarding issues relevant to the CN. It offers nothing by way of material fact issues:

- That the “project is not what it claims to be,” referring to Goodhue’s initial preliminary turbine layout map;
- “If sited as proposed, it will have an impact on local residences and property that cannot be mitigated;”
- The argument that “this project should not be utilized by Xcel Energy or any other buyer for compliance with the Renewable Energy Standard;” and
- This project does not “take into account all costs associated with this project, particularly transmission interconnection.”

Goodhue does not dispute that the turbine layout map originally included with the Application unintentionally omitted a number of area residences. The map, however, was and remains a *preliminary* turbine layout map that will be updated, consistent with practice, to reflect changes in turbine siting prior to construction. Nor does Goodhue dispute that there will be some impacts on local residents and property in the area. As the courts have long recognized, almost every human activity has some adverse impact on the environment. These issues will be addressed as part of the site permit process. GWT’s assertions that the Project should not be used to comply with the RES or that transmission costs have not been fully considered, are just that – assertions. The Administrative Procedure Act requires a higher standard for contested cases.

The notice and comment period, coupled with public hearings near the project, are more than adequate to ensure that a full record is created in this docket. To date, this process has proven an efficient and effective method to receive public comment.

Because GWT has not demonstrated the existence of material issue of fact, Goodhue respectfully requests that the Commission deny GWT’s request.

Office of Energy Security

The OES discusses the request for a contested case in their comments submitted on March 29, 2010 in part II. OES Analysis, C. Request for Contested Case (beginning on Page 11)⁴.

In regard to the CN contested case request, the OES summarizes by indicating:

³ eDockets Document ID: [20103-48462-03](#)

⁴ Of the trade secret version of this filing.

...Second⁵, the OES understands that the Commission may choose to refer any CN proceeding to a contested case process if, for example, the Commission believes there are material facts in dispute. Third, the OES will continue to participate in the proceedings regarding the PPAs and CN in whatever forum the Commission deems is most appropriate.

Staff Discussion

The issues raised by GWT in their February 12, 2010 petition relate to all four dockets pending before the Commission as this time.

- 1) 08-1233: Goodhue's Application for a Large Wind Energy Conversion System Site Permit
- 2) 09-1186: Goodhue's Application for a Certificate of Need
- 3) 09-1349 Xcel's Petition for Approval of a C-BED Power Purchase Agreement (North)
- 4) 09-1350 Xcel's Petition for Approval of a C-BED Power Purchase Agreement (South)

Staff believes the only item raised that pertains to the CN docket is:

This project does not take into account all costs associated with this project, particularly transmission interconnection.

The Commission is required by law to consider this issue in the CN process, and it will be considered regardless if the process is a contested process or informal process.

The potential interconnection costs are noted in the *site permit* application for this project, (Docket 08-1233) but not in the CN docket, the site permit states the following:

Based on MISO's filings with the Federal Energy Regulatory Commission (FERC) and the known transmission availability at Goodhue and Vasa, National Wind has invested substantial development resources in the Goodhue Wind Project. National Wind will transfer the interconnection requests to Goodhue Wind, LLC in the next month. Goodhue Wind will then be responsible for all interconnection requests, studies and agreements required to put the Project in service in a desirable timeframe. Due to the transmission capacity that was revealed in the DRG study, the interconnection costs will be limited to two project substations and private transmission from the wind farm to the point of interconnection (POI).

A summary of each of these facilities is described below:

Vasa: MISO Queue number H061. The Vasa POI is located approximately four miles north of the Project Area footprint. A four mile tap line will be built from the project substation to the Vasa POI. The cost of this tap line is estimated to be \$2,000,000.

Goodhue: MISO Queue number H062. The Goodhue POI is located within the Project Area footprint. A one mile, 69 kV tap line will be built from the project substation to the Goodhue POI. The cost of this tap line is estimated to be \$1,000,000. The revised MISO queue process allows uncongested interconnection requests to go straight to Facility Study following a review of the

⁵ 'First' is in regard to the AWA Goodhue Wind siting docket (08-1233).

system impact starting November 3, 2008. Thus National Wind is confident that it can interconnect in a timeframe competitive with Group 5 and Group 6 queue entries.

While the CN application itself does not provide the specific cost of transmission interconnection, the costs of interconnection noted in the site permit appear to be relatively minimal; regardless, this does not appear to be a significant issue.

In addition, the Goodhue project has participated in Xcel's competitive bidding process as further explained in the Xcel's PPA dockets. As a result of Xcel's bidding process, this project was pursued as the most cost-effective C-BED resource available to the company; the price reasonableness is being reviewed by the Commission in concurrent dockets.

Staff does not believe that this issue warrants a contested case proceeding and instead recommends this issue could be clarified by Goodhue in a supplemental filing. While staff does not believe this information would have a noteworthy impact on the outcome of the CN, staff requests that the applicant provide the following additional information to explicitly clarify this issue:

- 1) whether the \$2,200 per kilowatt (installed basis) estimate (noted on page 26 of the CN application) and the total project cost estimate of \$170 million (noted on page 27) include anticipated transmission interconnection costs;
- 2) and, if neither of those costs include the anticipated transmission interconnection costs, the applicant should inform the CN record of the best available information on these costs.

Staff notes that the OES provided significant comments and issues to be considered in their joint, March 29, 2010, CN and PPA reply comments. The PPA dockets are also before the Commission for approval on the same day as this item, April 15, 2010. Staff believes that the issues raised by the OES in their reply comments are being addressed by the staff briefing papers for the PPA dockets.

Conclusion

It is staff's opinion that Goodhue Wind Truth's request for a contested case does not identify material issues of fact and therefore does not merit a contested case proceeding.

Decision Alternatives

1. Deny the request for a contested case hearing.
2. Find that the issues have not been resolved to the Commission's satisfaction and grant the request for a contested case hearing. If the request is granted the Commission may determine the scope of the contested case proceeding or have an Administrative Law Judge from the Office of Administrative Hearings determine the scope of the proceeding.
3. Make some other decision deemed more appropriate.

Staff Recommendation. Staff recommends Alternative 1.