

April 3, 2013

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square Building
121 7th Place East
St. Paul, Minnesota 55101-2147

RE: Comments of the Minnesota Department of Commerce, Division of Energy Resources
Docket No. IP6701/CN-09-1186

Dear Dr. Haar:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

The Minnesota Public Utilities Commission's (Commission) *Order Reopening Case under Minn. Stat. §216B.25, Setting Procedures, and Requiring Filings*.

The Order was issued on March 20, 2013 in the following dockets pertaining to matters analyzed by the Energy Regulation and Planning group within the Department: *In the Matter of AWA Goodhue Wind, LLC's Application for a Certificate of Need for a 78 MW Wind Project and Associated Facilities in Goodhue County* (Docket No. IP6701/CN-09-1186), as filed by:

Christina K. Brusven
Attorney for New Era Wind Farm, LLC
200 South Sixth St., Suite 4000
Minneapolis, MN 55402

And *In the Matter of Northern States Power Company's Request for Approval of Power Purchase Agreements with Goodhue Wind, LLC* (Docket Nos. E002/M-09-1349 and 1350), as filed by:

Timothy J. Edman
Manager, Regulatory Administration
Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401

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The Department addresses issues raised by the Commission in its Order and is available to answer any questions the Commission may have.

Sincerely,

/s/ STEVE RAKOW
Rates Analyst

SR/sm
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET NO. IP6701/CN-09-1186

I. INTRODUCTION

On August 23, 2011 the Minnesota Public Utilities Commission (Commission) issued its *Order Granting Certificate of Need* (CN Order) for AWA Goodhue, LLC's 78 MW wind farm to be located in Goodhue County, Minnesota (Project). The Commission determined that the Project qualified as a community-based energy development (C-BED) in Docket Nos. E002/M-09-1349 and E002/M-09-1350. The CN Order granted the Project a certificate of need (CN). The CN Order did not specify an in-service date for the Project. However, the power purchase agreements (PPAs) between Northern States Power Company d/b/a Xcel Energy (Xcel) and the AWA Goodhue, LLC provided for a December 31, 2011 commercial operation date (see Docket Nos. E002/M-09-1349 and E002/M-09-1350). The PPAs were the basis of the need determination.

Subsequently, AWA Goodhue, LLC was re-named New Era Wind Farm, LLC (New Era or the Company).

On December 31, 2012, pursuant to Minnesota Rules 7849.0400, New Era submitted a *Notice of Delayed In-Service Date for the 78 MW New Era Wind Farm*.

On March 20, 2013 the Commission issued its *Order Reopening Case under Minn. Stat. §216B.25, Setting Procedures, and Requiring Filings* (Order) in Docket Nos. IP6701/WS-08-1233, IP6701/CN-09-1186, E002/M-09-1349, and E-002/M-09-1350. The Order listed the following issues to be addressed:

C-BED Status

- Has New Era Wind Farm, due to ownership changes or for any other reason, lost the C-BED status the Commission found to exist in its April 28, 2010 order?¹
- If New Era does not meet the criteria for C-BED status at this time, what is its factual basis for asserting that it will meet the standard by its proposed in-service date?
- Does the project meet the requirements of the certificate of need statute and certificate of need rules without C-BED status?²
- Do the revisions to the C-BED statute enacted in 2010 affect the project's ability to meet the requirements of the certificate of need statute and rules without current C-BED status?
- Did the change in ownership of the limited liability company that owns the project violate the anti-transfer provisions applicable to C-BED projects under Minn. Stat. § 216B.1612, subd. 3 (c)? If so, what action should the Commission take?

Other Changes in Circumstances

- Does the project's loss of financing, the absence of turbine purchase agreements, or the unsettled status of the power purchase contracts affect the certificate of need determination?
- Does the project currently have in hand the land leases, easements, and wind rights required to construct the 78-megawatt wind farm for which it received a certificate of need? How does the answer to this question affect the certificate of need determination?
- If the project currently lacks the land leases, easements, and wind rights required to construct the wind farm as originally certificated, what alternatives are available for consideration? What is the likelihood of changes to the size of the wind farm or the size, type, or configuration of the turbines? What is the project's projected time frame for making these determinations and then for proceeding? How do the answers to these questions affect the certificate of need determination?
- How would changes in the size of the wind farm or in the size, type, or configuration of the turbines affect the environmental and wildlife protection considerations made in the certificate of need determination? How would they affect the certificate of need determination itself?

¹ Order Approving Power Purchase Agreements, Approving Contract Amendments, and Requiring Further Filings, Dockets E-002/M-09-1349 and E-002/M-09-1350.

² Minn. Stat. § 216B.243 and Minn. R. 7849.0120.

- Would accommodating the concerns of the Minnesota Department of Natural Resources or the U.S. Fish and Wildlife Service require changes in the size, type, or timing of the wind farm or in any of the substantive provisions of the certificate of need or the site permit? If so, does the project intend to make these accommodations? How do the answers to these questions affect the certificate of need determination?
- If changes in the size of the wind farm or in the size, type, or configuration of the turbines were proposed – raising new environmental considerations – how would the project engage and collaborate with the Minnesota Department of Natural Resources and the U.S. Fish and Wildlife Service?
- What is the current in-service date for the project? What is the expected in-service date, or, if the date is not known, when do the parties anticipate the conclusion of the negotiations between the Applicant and Xcel regarding the power purchase agreements?
- Does the new project owner stand behind all representations made in the application for the certificate of need and in the application for the site permit? Is the new owner willing and able to comply with all terms and conditions in the certificate of need and the site permit?

Other Issues

The list above does not include every issue that could affect this certificate of need decision, and the Commission invites parties, participants, and members of the public to raise any other issues they consider material during the initial comment period established below. Newly raised issues will then be addressed during the reply comment period.

Finally, the Commission requests comments on what process it should use going forward to resolve the issues identified above and any additional issues raised in the course of this proceeding.

Below the Department addresses selected issues raised by the Order.

II. DEPARTMENT ANALYSIS

Below the Department underlines the portion of the question being addressed for greater clarity.

Question: Questions pertaining to C-BED Status (the five bullets under this category)

Response: As stated (corrected) in the Department's February 8, 2013 comments in Docket No. IP6701/CN-09-1186:

[T]here is an existing Order from the Commission issued on April 28, 2010 in Docket Nos. E002/M-09-1349 and E002/M-09-1350 regarding the Project's community-based energy development (C-BED) status. New Era's responses to Commission discovery state that the Company may seek in the future another determination of C-BED status that, it appears, may constitute a change to or amendment of the Commission's Order. Due to the Company's own uncertainty and the fact of a current Commission Order on the issue of C-BED status, it would be premature at this time [for the Department] to address possible changes to the Commission's Order on the C-BED status of the Project.

Question: Does the project meet the requirements of the certificate of need statute and certificate of need rules without C-BED status?

Response: The Department's February 12, 2010 comments in Docket No. IP6701/CN-09-1186 addressed the issue of the Project meeting CN requirements without C-BED status. The comments concluded:

Because the proposed Project does not have a reasonable cost for ratepayers under the non-CBED pricing when compared to a wind alternative which gives the project significant benefit of the doubt, the OES [now the Department] concludes that the proposed Project does not meet the criteria established in Minnesota Rules 7849.0120 B. Therefore, if the Commission determines that the project is not CBED, the OES recommends that the Commission reject the Petition and not issue a certificate of need to GW for the 78 MW project.

Therefore, at the time the Commission approved a CN for the Project the Department's position was that the proposed Project does not meet the CN requirements without CBED status. The Department notes that changes in the projects status after a CN is approved are covered by Minnesota Rules 7849.0400.

Question: Does the project's loss of financing, the absence of turbine purchase agreements, or the unsettled status of the power purchase contracts affect the certificate of need determination?

Response: The Department addresses this issue in two parts. First, regarding "loss of financing, the absence of turbine purchase agreements" the CN is one of the first permits obtained by a project. Thus, it is typical for many issues not to be in final form at the time a CN is granted. Also, the Department notes that changes in the project's status after a CN is approved are covered by Minnesota Rules 7849.0400—loss of financing, absence of turbine purchase agreements, and

“unsettled status” of PPAs are not covered directly by Minnesota Rules 7849.0400.

Regarding turbines, the original petition for a CN stated:

...the project includes 39-52 turbines (depending on the turbine specifications), with a total nameplate capacity up to 78 MW... Goodhue Wind has not made a final turbine selection for the Project and proposes to permit the Project for turbines ranging from 1.5 to 2.0 MW.

Similarly, the October 22, 2008 petition for a CN filed by Ecoharmony West Wind LLC (Docket No IP6688/CN-08-961) states:

The project will have a nameplate capacity of approximately 200 MW and will involve constructing either 134 turbines with a rating of 1.5 MW, or up to 87 turbines with an output of 2.3 MW, or some other combination that yields 200 MW.

Thus, lack of knowledge of the specific turbines is not unusual in a CN.

Regarding financing, the source of a project's financing is rarely discussed or analyzed in CN proceedings. The exact source of the financing is no more important than the exact turbine specification. What matters, at the time of the CN, is the overall project, its overall cost, impact and so forth. Certainly assumptions are made regarding the cost of financing and other inputs. What matters is the reasonableness of the estimate of financing cost, rather than knowledge of the specific source.

Second, regarding “unsettled status of the power purchase contracts” the Department’s February 12, 2010 comments addressed this issue. Regarding Minnesota Rules 7849.0120 A (1) the comments concluded:

In this case, GW [now New Era] has two PPAs with Xcel for the entire capacity of the proposed Project. Therefore, the question becomes the accuracy of Xcel’s forecast. The Commission’s August 5, 2009 *Order Approving Five-year Action Plan as Modified and Setting Filing Requirements* (IRP Order) in Docket No. E002/RP-07-1572 did not discuss forecasting in detail. However, the OES’s June 16, 2008 comments stated “OES recommends approval of OES’s 1.3 percent DSM adjusted energy requirement and peak demand forecast.” Therefore, the OES concludes that this subcriterion has been met.

Regarding Minnesota Rules 7849.0120 A (2) the comments concluded:

The Commission's IRP Order for Xcel states:

Over the long term planning horizon, Xcel shall strive to meet legislative requirements in Minn. Stat. 216B.241, subd. 1c (b). As an initial step, Xcel shall achieve a 1.15 percent DSM goal in 2010, 1.2 percent in 2011, and 1.3 percent in 2012.

Even with that demand-side management accomplishment additional capacity and energy are required by Xcel's system. Therefore, the OES concludes that this subcriterion has been met.

Regarding Minnesota Rules 7849.0120 A (4) and facilities that do not require a CN, the comments concluded:

Both categories of non-CN facilities could have provided a bid into Xcel's competitive bidding process that selected the proposed Project. Analysis of Xcel's competitive bidding process is contained in OES's comments in Docket Nos. E002/M-09-1349 and E002/M-09-1350 which are being filed at the same time as these comments. Based upon that analysis, the OES concludes that this subcriterion has been met.

Therefore, the Department's position regarding the decision criteria specified by Minnesota Rules 7849.0120 A was largely based upon the existence of the PPAs and upon Xcel's performance regarding the rule criteria. If it can be shown that the PPAs with Xcel are no longer valid or are otherwise not in effect then a new analysis regarding Minnesota Rules 7849.0120 would be necessary, assuming the Commission's CN decisions were revised. However, again the Department notes that lack of PPAs is not a criteria listed in Minnesota Rules 7849.0400.

Question: Does the project currently have in hand the land leases, easements, and wind rights required to construct the 78-megawatt wind farm for which it received a certificate of need? How does the answer to this question affect the certificate of need determination?

Response: Possession of leases, easements and wind rights is unnecessary for a CN. As discussed above, a CN is usually one of the first permits pursued and knowledge of details is assumed to be unavailable. Instead, applicants provide estimates of the cost to obtain items such as land leases, easements, and wind rights. Further, possession of land leases, easements, and wind rights is not a criterion listed in Minnesota Rules 7849.0400.

Question: If the project currently lacks the land leases, easements, and wind rights required to construct the wind farm as originally certificated, what alternatives are available for consideration? What is the likelihood of changes to the size of the wind farm or the size, type, or configuration of the turbines? What is the project's projected time frame for making these determinations and then for proceeding? How do the answers to these questions affect the certificate of need determination?

Response: Changes in size, type, timing, or ownership of a project after a CN is approved are covered by Minnesota Rules 7849.0400:

- The likelihood of changes in size is not relevant; only an actual change in size greater than 16 MW triggers review under Minnesota Rules 7849.0400.
- The projected time frame for obtaining land leases, easements, and wind rights by the Company is only relevant to the extent it impacts the Commission-approved in-service date by more than one year (see Minnesota Rules 7849.0400).

Question: How would changes in the size of the wind farm or in the size, type, or configuration of the turbines affect the environmental and wildlife protection considerations made in the certificate of need determination? How would they affect the certificate of need determination itself?

Response: First, certificate of need socioeconomic analysis is governed by Minnesota Rule 7849.0120 C which states that a certificate of need must be granted upon determining that:

... by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health considering:

- (1) the relationship of the proposed facility, or a suitable modification thereof, to overall state energy needs;
- (2) the effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the effects of not building the facility;
- (3) the effects of the proposed facility, or a suitable modification thereof, in inducing future development; and
- (4) the socially beneficial uses of the output of the proposed facility, or a suitable modification thereof, including its uses to protect or enhance environmental quality.

The Department's February 12, 2010 comments did not address this issue, but stated:

The OES relies on the ER for its socioeconomic analysis. As of the date of the submission of these comments, that report is not yet complete. Therefore, the OES recommends that the Commission consider the ER.

Secondly, environmental and wildlife protection considerations that are "the relevant policies, rules, and regulations of other of other state and federal agencies and local governments" are considered under Minnesota Rules 7849.0120 D. The criterion is that "the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply."

After a CN is approved, Minnesota Rules 7849.0400 states, "A design change required by another state agency in its permitting process for certified facilities is not subject to review by the commission, unless the change contradicts the basic type determination specified by the certificate of need." Therefore, if the environmental and wildlife protection considerations of another agency change the size of the Project, it is not subject to Commission review; only a change in type would be subject to Commission review. Nevertheless, a size change for any reason of more than 80 megawatts or 20 percent of the approved capacity does require Commission recertification.

Additionally, the Department understands that, pursuant to Minnesota Statutes § 216B.25, the Commission can change its orders at any time—past Commissions cannot bind the present Commission. Therefore, if the environmental and wildlife protection considerations are part of a Commission proceeding, they can change the CN determination as the Commission determines under its procedures.

Finally, changes in size and type after CN approval are covered by Minnesota Rules 7849.0400. Changes in turbine configuration are not a consideration under Minnesota Rules 7849.0400.

Question: Would accommodating the concerns of the Minnesota Department of Natural Resources or the U.S. Fish and Wildlife Service require changes in the size, type, or timing of the wind farm or in any of the substantive provisions of the certificate of need or the site permit? If so, does the project intend to make these accommodations? How do the answers to these questions affect the certificate of need determination?

Response: First, accommodating the concerns of the Minnesota Department of Natural Resources and the U.S. Fish and Wildlife Service could be considerations under Minnesota Rules 7849.0120 D. The criterion under Minnesota Rules 7849.0120 D was cited above. Questions the Commission must answer include whether

these concerns are related to “policies, rules, and regulations” and whether they are “relevant.”

Second, the concerns could be covered under Minnesota Rules 7849.0120 C (2) and C (4), cited above. Minnesota Rule 7849.0120 C (2) directs the Commission to consider a comparison of the impacts of the proposed Project to the no-build alternative on an environmental and socioeconomic basis. Minnesota Rule 7849.0120 C (4) directs the Commission to consider the uses of the output of the proposed facility “including its uses to protect or enhance environmental quality.”

After CN approval, answers to the questions listed by the Commission only impact the CN to the extent they trigger one of the criteria listed in Minnesota Rules 7849.0400 unless the Commission chooses to change its Order, as noted above.

Question: What process it should use going forward to resolve the issues identified above and any additional issues raised in the course of this proceeding.

Response: The Department has no preference as regards to process; the Department will participate in any process the Commission selects to the extent resources are available.

III. SUMMARY OF DEPARTMENT’S RESPONSES

At the time the Commission approved a CN for the Project, the Department’s position was that the proposed Project did not meet the CN requirements without its C-BED status. Due to the Company’s own uncertainty and the fact of a current Commission Order on the issue of C-BED status, it would be premature at this time for the Department to address possible changes to the Commission’s Order on the C-BED status of the Project.

A proposed project’s financing, turbine purchase agreements, power purchase contracts, possession of leases, easements and wind rights are not required to be known at the time of a CN determination; therefore, changes in these areas are only required to be considered by the Commission to the extent that they result in the criteria found in Minnesota Rules 7849.0400.

While Minnesota Rules 7849.0400 sets forth the thresholds for Commission recertification of certificates of need, the Commission has broad authority to rescind or amend its past Orders at any time and for any reason.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. IP6701/CN-09-1186

Dated this 3rd of April, 2013

/s/Sharon Ferguson

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