

**State of Minnesota
Before the
Minnesota Public Utilities Commission**

**Nancy Lange
Dan Lipschultz
Matt Schuerger
Katie Sieben
John Tuma**

**Chair/Commissioner
Commissioner
Commissioner
Commissioner
Commissioner**

In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, *Minnesota Rules*, Chapters 7849 and 7850; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines, *Minnesota Rules*, part 7829.2550

Docket No. E,ET,IP-999/R-12-1246

**Comments of
Wisconsin Power and Light Company**

AFFIDAVIT OF SERVICE

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Annette K. Behnke, being first duly sworn on oath, deposes and states:

That on the 8th of May, 2017, copies of the foregoing Affidavit of Service, together with Wisconsin Power and Light Company's Comments in response to the March 23, 2017 NOTICE OF COMMENT PERIOD issued in this docket were served upon the parties on the attached service list, by e-filing, overnight delivery, electronic mail, and/or first-class mail, proper postage prepaid from Madison, Wisconsin.

I.

/s/ Annette K. Behnke
Annette K. Behnke

II.

Subscribed and Sworn to Before Me
This 8th day of May, 2017.

/s/ Kathy Chiono
Notary Public, State of Wisconsin
My Commission expires February 5, 2021

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Wisconsin Power and Light Company (WPL) respectfully submits these COMMENTS in response to the March 23, 2017 NOTICE OF COMMENT PERIOD issued in this docket. This docket reflects the Commission’s ongoing efforts to revise Chapters 7849 (Certificate of Need or CON) and 7850 (Site and Route Permits) so as to “update[e], improv[e], and clarify[] the Commission procedures for evaluating applications for certificates of need and site and route permits and incorporating new statutory criteria governing certificates of need.”¹ WPL provides these comments in the context of its ownership and operation of the Bent Tree Wind Project (Bent Tree), located in Freeborn County.²

Minn. Stat. § 216B.243, subd. 8(7) (enacted in 2014) provides exemption from CON requirements for a wind energy conversion system owned by an independent power producer (IPP) unless the output is sold to providers of retail or wholesale electric service to Minnesota customers. The application of that exemption should be clarified in the proposed amendments to Chapter 7849.

¹ MARCH 9 BRIEFING PAPERS AT 1.

² See Docket No. ET-6657/WS-08-573 (Site Permit) and Docket No. ET-6657/CN-07-1425 (Certificate of Need).

A. 7849.0010, sup. 12 [Definition of IPP] 7849.0030, sup. 2 [Scope], and 7849.0255 [IPP LEGF Application]

Recent amendments to Minn. Stat. § 216B.243, subd. 8(7) apply CON requirements to certain independent power producer (IPP) projects, as noted by the Briefing Papers:³

Recent legislative changes to Minn. Stat. § 216B.243, subd. 8(7), apply the certificate of need requirements to independent power producers who intend to sell electric output to retail electric utilities and wholesale service providers, *excluding sales to the Midcontinent Independent Transmission System Operator (MISO)*. (Emphasis added.)

IPP projects that sell to MISO are excluded by the statute, but the statute also excludes from the CON requirement any IPP wind or solar projects that do not provide retail service in Minnesota or wholesale service to another entity in Minnesota. The proposed rules, including the definition of IPP, should expressly recognize and incorporate both of those exclusions in order to preclude possible confusion or inconsistencies between the rules and the statute.

Minn. Stat. § 216B.243, subd. 8(7) establishes the exclusions for some IPP projects, reading as follows:

Subd. 8. Exemptions. (a) This section does not apply to:

(7) a wind energy conversion system or solar electric generation facility if the system or facility is owned and operated by an independent power producer and the electric output of the system or facility *is not sold to* an entity that provides retail service in Minnesota or wholesale electric service to another entity in Minnesota other than an entity that is a federally recognized regional transmission organization or independent system operator; (Emphasis added.)

In effect, the CON process does not apply to an IPP owned and operated wind energy conversion system or solar electric generation facility unless the output is sold to an entity that provides retail or wholesale service in Minnesota. For example, if Minn. Stat. § 216B.243, subd. 8(7) had been in effect when WPL's Bent Tree Wind Project was developed in 2009, Bent Tree would not

³ MARCH 9 BRIEFING PAPERS at 5. *See also* 2010 Minn. Laws Ch. 254, § 13.

have needed a CON, nor would it have needed a waiver from certain requirements associated with the CON, because WPL's Bent Tree Wind Project does not provide or sell either retail or wholesale electric service to customers in Minnesota. This conclusion is further supported by a House Research Department report that characterized the IPP exemption as one that "Exempts wind and solar facilities not owned and operated by a utility and whose output is not sold in Minnesota from obtaining a certificate of need from the Public Utilities Commission prior to construction."⁴

Based on these factors, WPL respectfully requests that the following amendments be made to the draft rules in order to preclude possible confusion or inconsistencies between the rules and the statute.

First, the description of the exemption in 7849.0030 should be clarified as follows:

Subp. 2. **Exemption.** Notwithstanding subpart 1 or any other provision in this chapter, a certificate of need is not required under this chapter for a facility, including an expansion of a facility, exempted by Minnesota Statutes, section 216B.243, subdivisions 8 and 9, section 216B.2422, subd. 6, and section 216B.2425, subd. 3.

Second, the definition of IPP in Minn. R. 7849.0100 should be amended to clarify that the provision of retail electric service *to end users who are located in Minnesota* will exclude an owner or operator of electric generation facilities from the definition of IPP:

Subp. 12a. **Independent Power Producer.** "Independent power producer" means any person engaged in the business of owning, operating, maintaining, or controlling equipment or facilities for furnishing electric generation but does not include a public utility, municipal electric utility, municipal power agency, cooperative electric association that provides electric service at retail to Minnesota consumers, a generation and transmission cooperative power association, or any other entity providing retail electric service to end user customers in Minnesota.

⁴ House Research Department, House Research Bill Summary: H.F. 2834 (Mar 31, 2014), <http://www.house.leg.state.mn.us/hrd/bs/88/HF2834.pdf> (emphasis added).

Third, proposed Minn. R. 7849.0255 should be amended to expressly reflect the Legislature's determination that certain IPP projects (that do not provide power for retail service to customers in Minnesota) are completely exempted from the CON requirements:

7849.0255 INDEPENDENT POWER PRODUCER LEGF APPLICATION.
An independent power producer proposing an LEGF that is not exempt from the obligation to obtain a certificate of need under Minnesota law must provide relevant data in the following manner.

Fourth, proposed Minn. R. 7849.0255 should be amended to clarify that utility data to be provided by an IPP pertains only if the purchaser provides service to Minnesota end user customers:

Subp. 1. **Utility data.** If the applicant has entered into a power purchase agreement with a utility serving end user customers who are located in Minnesota, the applicant must provide the data required under part 7849.0250 and parts 7849.0270 to 7849.0300 from the utility for the proposed facility. The application must also include the docket number for the commission proceeding in which the power purchase agreement was approved.

...

Subp. 3. **Relevant available data.** If the applicant has not entered into a power purchase agreement with a utility serving end user customers who are located in Minnesota, and does not have access to the data required under part 7849.0250 and parts 7849.0270 through .0300, the applicant must provide the following: ...

Together, these changes more clearly conform the rules to Legislature's intent (reflected in Minn. Stat. § 216B.243, subd. 8(7)) that CON requirements do not apply unless the output of an IPP wind energy conversion facility is sold to providers of retail (or wholesale) electric service to Minnesota customers.

B. 7849.0200 [Application Form and Manner of Filing]

WPL has previously received exemptions from specific CON information requirements in connection with Bent Tree, a process that was of great importance to the preparation of WPL's

CON application for that project.⁵ In addition, Minn. Stat. § 216B.243, subd. 8(7) exempts IPP wind energy conversion facilities from CON requirements, under certain conditions. While the application of the exemption will be clear in most cases, it is possible that some cases may not be entirely clear. In those circumstances, an applicant may request the Commission's determination of the applicability of the exemption.

WPL acknowledges and appreciates the timing difficulties under the existing Minn. R. 7849.0200.⁶ However, the absence of any firm timeframe for a decision could indefinitely extend the process for receiving a decision on a request for exemption. Accordingly, WPL respectfully requests the Commission retain an express timeframe for acting on exemption requests. An extension of the timeframe to 90 days for a decision by the Commission would provide adequate time for public comments and notice of any Commission meetings on the exemption request.

CONCLUSION

WPL appreciates the opportunity to submit the foregoing comments on the Commission's proposed revisions to Chapters 7849 and 7850.

Dated: May 8, 2017

Wisconsin Power and Light Company

By: /s/ Andrew C. Hanson

Andrew C. Hanson

Senior Attorney

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⁵ See Docket No. ET-6657/CN-07-1425, ORDER (Jan. 15, 2008).

⁶ MARCH 9 BRIEFING PAPERS at 18-19.