

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
Matthew Schuerger
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Blazing
Star Wind Farm, LLC for a Site Permit for
the 200 Megawatt Blazing Star Wind Project
in Lincoln County

ISSUE DATE: October 28, 2016

DOCKET NO. IP-6961/WS-16-686

DOCKET NO. IP-6961/CN-16-215

ORDER FINDING APPLICATION
COMPLETE, VARYING TIME
LIMITS, AND ESTABLISHING
PROCEDURAL FRAMEWORK
FOR COMBINED PROCEEDINGS

PROCEDURAL HISTORY

On September 2, 2016, Blazing Star Wind Farm, LLC (Blazing Star or Applicant) filed a site permit application for a 200 megawatt wind project in Lincoln County, Minnesota.

On September 19, 2016, the Commission issued an order that accepted as complete Blazing Star's application for a certificate of need for the proposed project.¹

On September 23, 2016, the Department of Commerce, Environmental Review and Analysis unit (Department) filed comments recommending that the Commission find the site permit application complete with the exception of certain clarifications and additional information.

On September 30, 2016, Blazing Star filed comments agreeing to provide the additional information requested by the Department prior to the public information meetings on the matter.

On October 18, 2016, the Commission met to consider the matter.

¹ *In the Matter of the Application of Blazing Star Wind Farm, LLC for a Certificate of Need for the 200 Megawatt Blazing Star Wind Project in Lincoln County*, Docket No. IP-6961/CN-16-215.

FINDINGS AND CONCLUSIONS

I. Summary of Actions

In this Order, the Commission finds that Blazing Star's site permit application is substantially complete, triggering the next phase of review for the application.

As part of this next phase, the Commission will do the following:

- Require Applicant, prior to the public information meeting, to provide the additional information and make the changes to the application requested by the Department in its September 23, 2016 filing;
- Combine, to the extent practicable, the site permit application review process with the certificate of need application review process;
- Refer the matter to the Office of Administrative Hearings for development of the record as set forth herein;
- Delegate administrative authority, including timing issues, to the Executive Secretary; and
- Vary Minn. R. 7854.0600 and .0800 to extend the Commission's time for making a decision on the application's completeness and making a decision on the issuance of a draft site permit.

II. Jurisdiction

Under Minn. Stat. § 216F.04 and Minn. R. 7854.0300, a person wanting to build a Large Wind Energy Conversion System (LWECS) must apply to the Commission for a site permit.² Because Blazing Star's project qualifies as an LWECS, Blazing Star is required to file a site permit application.³

III. Application Completeness

The Department reviewed the site permit application under Minn. R. Ch. 7854 and recommended that the Commission find the application complete upon the filing of further information. Specifically, the Department requested that Blazing Star file information:

- Clarifying the statement in Section 8.2 of the application that wind energy projects are generally compatible with zoning inside the proposed project boundaries; and
- Revising Tables 8.20 and 8.24 in the application to include impacts from all associated project infrastructure, not just impacts associated with proposed turbine locations, and

² Minn. Stat. § 216F.01, subd. 2, defines an LWECS as any combination of wind energy conversion systems with a combined nameplate capacity of 5,000 kilowatts or more.

³ Under Minn. R. 7854.0500, subp. 2(A), the Commission will not issue the site permit for an LWECS for which a certificate of need is required until the Commission has granted the certificate of need.

clarifying footnote 1 of Table 8.20 regarding the acreage breakdown of different farmland categories identified.

The Department also recommended that the site permit application be reviewed jointly with the associated certificate of need application. Finally, to allow adequate time for scheduling public meetings and receiving comments, the Department recommended that the Commission vary the 45-day timeline in Minn. R. 7854.0800 for a preliminary determination as to whether a permit may be issued or should be denied.

The Commission concurs with the Department and will therefore direct Blazing Star to file the above information prior to the public information meeting to be scheduled in these matters.

IV. Referral to the Office of Administrative Hearings

While no person has identified contested issues of material fact or recommended that the case be referred to the Office of Administrative Hearings for contested case proceedings, the Commission finds that it cannot resolve all issues raised by the application on the basis of the record before it. The issues turn on specific facts that are best developed in proceedings conducted by an Administrative Law Judge. The Commission will therefore refer the matter to the Office of Administrative Hearings for summary proceedings under Minn. R. 7850.3800 to facilitate development of the factual record.

Further, when the Commission convenes a public hearing as part of its review of a certificate of need application, it generally considers the related site permit application at the same time. Accordingly, to the extent practicable, the Commission will combine the site permit application review process with the certificate of need application review process. The Commission will also expand the scope of the certificate of need public hearing process to include issues related to the site permit application. The Commission will take the steps listed below to ensure adequate development of the record.

The Commission requests that an Administrative Law Judge from the Office of Administrative Hearings preside over the hearing and do the following:

- Conduct the public hearing under Minn. R. 7850.3800, subp. 2–4 and, as the Administrative Law Judge determines appropriate, Minn. R. 1405.0500; Minn. R. 1405.0600; Minn. R. 1405.0800; Minn. R. 1405.0900; and Minn. R. 1405.2200;
- Direct that intervention as a party is not required. The parties to the proceeding are the Department and the Applicant. Other persons may participate as public participants or as otherwise directed;
- Request state agencies to participate in accord with Minn. Stat. § 216E.10, subd. 3;
- Establish the types of filings necessary to facilitate proper record development (i.e., testimony, briefs, reply briefs, proposed findings, and site permit recommendations) and a schedule for submitting those filings through the scheduling of a prehearing conference under Minn. R. 1405.1100, as determined appropriate;

- Emphasize the statutory time frame for the Commission to make final decisions on the application and encourage the Applicant and others to adhere to a schedule that conforms to the statutory timeframe;
- Request the Applicant and others to address whether the proposed LWECS project meets the criteria established under Minn. Stat. Ch. 216F and Minn. R. Ch. 7854;
- Prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the LWECS site permit application, and provide recommendations, if any, on conditions and provisions for the proposed site permit; and
- Direct that the hearing record be maintained through the Commission's electronic e-Dockets filing system.

Finally, to facilitate the review process, the Commission takes the following steps:

- Delegates administrative authority, including timing issues, to the Executive Secretary;
- Requests that the Department continue to study the issues and indicate during the hearing process, through testimony or comment, its position on the reasonableness of granting a site permit;
- Requires the Applicant to facilitate in every reasonable way the continued examination of the issues requested by the Department and Commission staff;
- Requires the Applicant to place a print or electronic copy of the site permit application in the government center or public library located closest to the proposed project site;
- Directs the Applicant to work with Commission staff and the Administrative Law Judge to arrange for publication of the notice of hearing in newspapers of general circulation at least ten days prior to the hearing, that such notice be in the form of visible display ads, and that proof of publication be obtained from the newspapers selected; and
- Directs that all notice requirements in these matters provided for under Minn. Stat. Ch. 216F and Minn. R. Ch. 7854 include delivery to all affected landowners. An affected landowner is any landowner or designee that is within or adjacent to the proposed LWECS site boundary.

V. Rule Variances

Under Minn. R. 7829.3200, the Commission may vary any of its rules upon making the following findings:

- 1) Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- 2) Granting the variance would not adversely affect the public interest; and

- 3) Granting the variance would not conflict with standards imposed by law.

Under Minn. R. 7854.0600, subp. 1, the Commission must make a decision on the completeness of the site permit application within 30 days of its filing. This timeline does not allow sufficient time to review the application, solicit comments, schedule a Commission meeting, and prepare a written order. The Commission will therefore vary the 30-day time line making the following findings:

- 1) Enforcing the 30-day time line would impose an excessive burden on the public, and on the Commission and Department, because it would not allow adequate time to review the application, schedule a Commission meeting, and prepare a written order;
- 2) Varying the 30-day time line would not adversely affect the public interest, and would instead serve the public interest by allowing more time for public comment on, and Commission consideration of, the application; and
- 3) Varying the 30-day time line would not conflict with any other standards imposed by law.

Under Minn. R. 7854.0800, subp. 1, the Commission must make a preliminary determination on whether to issue a site permit within 45 days of accepting an application. To ensure sufficient time to accommodate public input, the Commission will vary the 45-day time line, making the following findings:

- 1) Enforcing the 45-day time line would impose an excessive burden on the public, on parties to the proceeding, and on the Commission, by jeopardizing the thoroughness of the Commission's decision-making process;
- 2) Varying the 45-day time line would not adversely affect the public interest, and would in fact serve the public interest by protecting the Commission's decision-making process; and
- 3) Varying the 45-day time line would not conflict with any other standards imposed by law.

VI. Public Advisor

Upon acceptance of an application for a site permit, the Commission is to designate a staff person to act as public advisor on the project under Minn. R. 7854.0700. The public advisor is available to answer questions from the public about the permitting process. In this role, the public advisor may not act as an advocate on behalf of any person.

The Commission will designate Kevin George as the public advisor. His contact information is: Kevin George, Public Advisor, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, Saint Paul, Minnesota 55101-2147. He can be reached at 651-201-2251, and by email at publicadvisor.puc@state.mn.us.

ORDER

1. The Commission hereby accepts Blazing Star's application as substantially complete.
2. Blazing Star shall file the following information prior to the public information meeting in these matters:
 - Clarification of the statement in Section 8.2 of the application that states that wind energy projects are generally compatible with zoning inside the proposed project boundaries; and
 - Revisions to Tables 8.20 and 8.24 in the application to include impacts from all associated project infrastructure, not just impacts associated with proposed turbine locations, and clarification of footnote 1 of Table 8.20 regarding the acreage breakdown of different farmland categories identified.
3. The Commission hereby requires that, to the extent practicable, the site permit application review process be combined with the certificate of need application review process. The certificate of need public hearing process will be expanded to include issues related to the site permit application.
4. The Commission hereby refers the matter to the Office of Administrative Hearings for development of the record as described herein.
5. The Commission directs the Applicant to comply with all requirements set forth below:
 - Address whether the proposed LWECS project meets the criteria established under Minn. Stat. Ch. 216F and Minn. R. Ch. 7854;
 - Continue to study the issues and indicate during the hearing process through testimony or comment its position on the reasonableness of granting a site permit;
 - Facilitate in every reasonable way the continued examination of the issues requested by the Department and Commission staff
 - Place a print or electronic copy of the site permit application in the government center or public library located closest to the proposed project site;
 - Work with Commission staff and the Administrative Law Judge to arrange for publication of the notice of hearing in newspapers of general circulation at least ten days prior to the hearing, that such notice be in the form of visible display ads, and that proof of publication be obtained from the newspapers selected; and
 - Deliver to all affected landowners all notice requirements in these matters provided for under Minn. Stat. Ch. 216F and Minn. R. Ch. 7854 shall. An affected landowner is any landowner or designee that is within or adjacent to the proposed LWECS site boundary.
6. The Commission hereby delegates administrative authority, including timing issues, to the Executive Secretary.
7. The Commission hereby varies Minn. R. 7854.0600, subp. 1, to extend the Commission's time for making a decision on application completeness.

8. The Commission hereby varies Minn. R. 7854.0800, subp. 1, to extend the Commission's time for making a decision on the issuance of a draft site permit.
9. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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