

The Commission met on **Tuesday, January 12, 2010**, with Chair Boyd and Commissioners O'Brien, Pugh, and Reha present.

## **ENERGY AGENDA**

### **E-133, E-317/SA-09-1381**

#### **In the Matter of the City of Thief River Falls to Extend its Assigned Service Area into the Area Presently Assigned to Red Lake Electric Cooperative, Inc.**

Commissioner Pugh moved that the Commission approve of the Petition.

The motion was adopted, 4-0.

### **E-017/M-09-883**

#### **In the Matter of Otter Tail Power Company's Petition for Approval of the Luverne Wind Project**

Commissioner Pugh moved that the Commission

1. approve Otter Tail Power's investment in the Luverne Project finding that:
  - a. the project qualifies as an eligible technology under Minn. Stat. § 216B.1691;
  - b. Otter Tail Power needs the energy generated by these facilities to meet its REO-RES obligations;
  - c. the proposed project is prudent and reasonable when compared to alternative approaches for meeting its RES obligations, based on the costs and facts represented by Otter Tail Power in this filing;
  - d. no determination regarding rate recovery is being made in this proceeding;
  - e. determine that the Luverne Project is eligible for future cost recovery through Otter Tail's Renewable Resource Cost Recovery Rider, subject to Commission review and approval of specific costs to be presented by Otter Tail in any future petition under Minn. Stat. § 216B.1645, subd. 2a;
2. find that Otter Tail Power's investment in the Luverne Project is an affiliated interest under Minn. Stat. § 216B.48; and
3. approve OTP's investment in the Luverne Project as an affiliated-interest filing under Minnesota Statute § 216B.48, with ongoing authority by the Commission.

The motion was adopted, 4-0.

**IP-6631/M-09-1184**

**In the Matter of the Petition of Riverwind Power Partners, LLC for Approval of an Exemption From the Certificate of Need Requirements**

Commissioner Pugh moved that the Commission accept the withdrawal of the Riverwind petition for exemption from certificate of need and close the docket.

The motion was adopted, 4-0.

**IP-6828/WS-09-1197**

**In the Matter of the Application of Pleasant Valley Wind, LLC, for a Large Wind Energy Conversion System Site Permit for the 300 MW Pleasant Valley Wind Project in Mower and Dodge Counties**

Commissioner O'Brien moved that the Commission

1. accept the Pleasant Valley Wind, LLC, Site Permit Application for a Large Wind Energy Conversion System as complete provided that Pleasant Valley Wind, LLC, will a) provide additional information to the Commission and the Office of Energy Security Energy Facilities Permitting staff as requested, and b) file a revised application containing the information identified by the Office of Energy Security Energy Facilities Permitting staff prior to distribution of the application pursuant to Minnesota Rules, part 7854.0600;
2. authorize the Office of Energy Security Energy Facilities Permitting staff to name a public advisor for this project; and
3. grant a variance to Minnesota Rules, part 7854.0800 to extend the period for the Commission to make a preliminary determination on whether a permit may be issued or should be denied for an unspecified, but reasonable period of time.

The motion was adopted, 4-0.

**IP-6687/CN-08-951**

**In the Matter of the Application of Noble Flat Hill Windpark I, LLC for a Certificate of Need for a Large Energy Facility, a 201 MW Large Wind Energy Conversion System and Associated Facilities in Clay County**

Commissioner Reha moved that the Commission

1. conclude that the Environmental Impact Statement prepared by the OES is adequate for Certificate of Need purposes, meeting the requirements of applicable statutes and rules;
2. grant a certificate of need to Noble Flat Hill Windpark I, LLC for the 201 MW Flat Hill Project and associated facilities in Clay County;

3. incorporate into the ALJ's Report for this docket the following modifications:
- **Modify ALJ Finding of Fact 50 as follows:** 50. Increasing the required distance from turbines to residences to a minimum of 1000 meters will mitigate the effects of both low frequency noise and shadow flicker. The Commission will include this finding, among the many other criteria used, when determining whether a site permit should be issued.
  - **Modify ALJ Finding of Fact 19 as follows:** 19. The Proposed Project Area covers approximately 20,000 acres comprising portions of 40 sections of land and 55 residential structures. ~~All but two of the residences are participating in the Proposed Project by contracting with Noble for the siting of wind turbines on their land.~~ Wind turbines are set back at least 700 feet from any participating residence. Based on the initially proposed layout of turbines, the nearest nonparticipating residence within the Proposed Project Area is approximately 1,200 feet from the nearest turbine. The average distance from a residence is approximately 3,000 feet.
  - **Modify ALJ Finding of Fact 32 as follows:** 32. Route 2A would deviate from Route 2 approximately 0.1 miles west of the intersection of 110th Street North (CSAH 19) and 15th Avenue North (CR 84). This is approximately 0.5 miles south of where Route 2 crosses the Buffalo River along 110th Street North (CSAH 19) and approximately 0.5 miles north of where Route 2 would enter the city limits of Glyndon. The Route 2A alignment would proceed west from the intersection of 110th Street North (CSAH 19) and 15th Avenue North (CR 84) for approximately 0.5 miles to 110th 100th Street North and proceed south for one mile. Route 2A would need to be located on the east side of ~~110th~~ 100th Street North to avoid two existing farms on the west side of the road. Route 2A would then continue south and cross U.S. Highway 10 and an intermittent stream. South of U.S. Highway 10, Route 2A would follow ~~110th~~ 100th Street South (CSAH 17) for approximately 1.25 miles. This road, ~~110th~~ 100th Street South (CSAH 17), comprises the western boundary of the city limits of Glyndon. Route 2A would be located on the east side of ~~110th~~ 100th Street South (CSAH 17) to avoid an existing residence on the west side of the road. Approximately 0.25 miles south of 12th Avenue South, Route 2A would turn east. At this point, the HVTL would be located along the southern boundary of the Glyndon city limits. Route 2A would travel east for approximately 0.5 miles to the center of the section, where it would encounter the former BNSF Railway right-of-way. Route 2A would travel southeast for approximately 1.0 miles where it would rejoin Route 2.
  - **Modify ALJ Finding of Fact 44 as follows:** 44. In light of recent studies, including "Public Health Impacts of Wind Turbines," prepared by the Minnesota Department of Health, May 22, 2009, the Commission is gathering information to determine if current permit conditions on setbacks remain appropriate and reasonable ~~may wish to consider increasing the distance that a wind turbine may be placed from a residence to reduce or eliminate low frequency noise, or introduce vegetative or other barriers.~~ The Pollution Control Agency's noise standards (a decibel exceedance standard) do not fully account for low frequency noise. ~~The EIS discusses the Department of Health Study and suggests that additional mitigation should be addressed in the permitting process.~~

The motion was adopted, 4-0.

**IP-6687/WS-08-1134**

**In the Matter of the Application for a Large Wind Energy Conversion System (LWECS)  
Site Permit for the Noble Flat Hill Windpark I Project in Clay County**

Commissioner Boyd moved that the Commission

1. adopt the Findings of Fact, Conclusions of Law and Order proposed by the OES regarding a site permit to construct the Noble Flat Hill Windpark I Project

a. amended with respect to Finding of Fact #50 as follows:

50. Increasing the required distance from turbines to residences ~~to a minimum of 1000 meters~~ will mitigate the effects of both low frequency noise and shadow flicker. The Commission will include this finding, among the many other criteria used, when determining whether a site permit should be issued.

and

b. containing the OES's proposed changes to the ALJ's Report with respect to the following three Findings of Fact:

- **Modify ALJ Finding of Fact 19 as follows:** 19. The Proposed Project Area covers approximately 20,000 acres comprising portions of 40 sections of land and 55 residential structures. ~~All but two of the residences are participating in the Proposed Project by contracting with Noble for the siting of wind turbines on their land.~~ Wind turbines are set back at least 700 feet from any participating residence. Based on the initially proposed layout of turbines, the nearest nonparticipating residence within the Proposed Project Area is approximately 1,200 feet from the nearest turbine. The average distance from a residence is approximately 3,000 feet.

- **Modify ALJ Finding of Fact 32 as follows:** 32. Route 2A would deviate from Route 2 approximately 0.1 miles west of the intersection of 110th Street North (CSAH 19) and 15th Avenue North (CR 84). This is approximately 0.5 miles south of where Route 2 crosses the Buffalo River along 110th Street North (CSAH 19) and approximately 0.5 miles north of where Route 2 would enter the city limits of Glyndon. The Route 2A alignment would proceed west from the intersection of 110th Street North (CSAH 19) and 15th Avenue North (CR 84) for approximately 0.5 miles to 110th 100th Street North and proceed south for one mile. Route 2A would need to be located on the east side of ~~110th~~ 100th Street North to avoid two existing farms on the west side of the road. Route 2A would then continue south and cross U.S. Highway 10 and an intermittent stream. South of U.S. Highway 10, Route 2A would follow ~~110th~~ 100th Street South (CSAH 17) for approximately 1.25 miles. This road, ~~110th~~ 100th Street South (CSAH 17), comprises the western boundary of the city limits of Glyndon. Route 2A would be located on the east side of ~~110th~~ 100th Street South (CSAH 17) to avoid an existing residence on the west side of the road. Approximately 0.25 miles south of 12th Avenue South, Route 2A would turn east. At this point,

the HVTL would be located along the southern boundary of the Glyndon city limits. Route 2A would travel east for approximately 0.5 miles to the center of the section, where it would encounter the former BNSF Railway right-of-way. Route 2A would travel southeast for approximately 1.0 miles where it would rejoin Route 2.

- **Modify ALJ Finding of Fact 44 as follows:** 44. In light of recent studies, including “Public Health Impacts of Wind Turbines,” prepared by the Minnesota Department of Health, May 22, 2009, the Commission is gathering information to determine if current permit conditions on setbacks remain appropriate and reasonable ~~may wish to consider increasing the distance that a wind turbine may be placed from a residence to reduce or eliminate low frequency noise, or introduce vegetative or other barriers.~~ The Pollution Control Agency’s noise standards (a decibel exceedance standard) do not fully account for low frequency noise. ~~The EIS discusses the Department of Health Study and suggests that additional mitigation should be addressed in the permitting process.~~

2. issue the site permit proposed by the OES, amended in the following three respects:
  - 1) The applicant’s intent to setback a minimum 1,200 feet from non-participating landowners’ residences should be incorporated into the permit.

Site Permit page 19, add:

**M. SPECIAL CONDITIONS**

1. The applicant shall fulfill its commitment to provide a minimum setback of 1,200 feet for all turbine towers to non-participating landowners’ residences. Adoption of this special condition is based on facts unique to this case and provides no precedent or foreshadowing regarding the size of setback that the Commission may deem appropriate and reasonable to require in future dockets.

- 2) Information to be provided on Shadow Flicker

Site Permit page 19, add:

**M. SPECIAL CONDITIONS**

2. The applicant shall provide data on shadow flicker impacts at the time it submits the final site plan and profile. Information should include, but not be limited to, the results of modeling used (if any), assumptions made, and the anticipated levels of impact from turbine shadow flicker. Adoption of this special condition is based on facts unique to this case and provides no precedent or foreshadowing regarding the information to be requested on shadow flicker that the Commission may deem appropriate and reasonable to require in future dockets.

- 3) Noise Study Proposal

Site Permit page 13, modify to:

## F. STUDIES

### 2. NOISE

The Permittee shall submit a proposal to the Commission for the conduct of a noise study. Upon the approval of the Commission, the Permittee shall carry out the study. The study shall be designed to determine the noise levels at different frequencies and at various distances from the turbines at various wind directions and speeds. Adoption of this special condition is based on facts unique to this case and provides no precedent or foreshadowing regarding the information to be requested on noise that the Commission may deem appropriate and reasonable to require in future dockets.

3. ask the Applicant to provide a summary report on the noise modeling conducted to date, the assumptions used, and the anticipated levels of noise from the turbines at different frequencies.

The motion was adopted, 4-0.

### **IP-6687/TL-08-988**

#### **In the Matter of the Application for a Route Permit for the Noble Flat Hill Windpark I 230 kV Transmission**

Commissioner Reha moved that the Commission approve and adopt the OES's proposed Findings of Fact, Conclusions of Law, and Order proposed by the OES for the Noble Flat Hill Windpark I 230 kV Transmission Line Project,

- a. amended with respect to Finding of Fact #50 as follows:

50. Increasing the required distance from turbines to residences ~~to a minimum of 1000 meters~~ will mitigate the effects of both low frequency noise and shadow flicker. The Commission will include this finding, among the many other criteria used, when determining whether a site permit should be issued.

- b. with the understanding that in adopting the Findings of Fact, Conclusions of Law, and Order proposed by the OES the Commission has determined 1) that the Environmental Impact Statement and record created at the public hearing address the issues identified in the EIS Scoping Decision and 2) that it will issue the high voltage transmission line Route Permit proposed by the OES, with appropriate conditions, to Noble Flat Hill Windpark I, LLC; and

- c. with the further clarification that the OES's proposed Findings of Fact, Conclusions of Law, and Order differ from the ALJ's Findings of Fact, Conclusions of Law, and Order in three respects:

- **ALJ Finding of Fact 19 is modified as follows:** 19. The Proposed Project Area covers approximately 20,000 acres comprising portions of 40 sections of land and 55 residential structures. ~~All but two of the residences are participating in the Proposed Project by contracting with Noble for the siting of wind turbines on their land.~~ Wind turbines are set back at least 700 feet from any participating residence. Based on the

initially proposed layout of turbines, the nearest nonparticipating residence within the Proposed Project Area is approximately 1,200 feet from the nearest turbine. The average distance from a residence is approximately 3,000 feet.

- **ALJ Finding of Fact 32 is modified as follows:** 32. Route 2A would deviate from Route 2 approximately 0.1 miles west of the intersection of 110th Street North (CSAH 19) and 15th Avenue North (CR 84). This is approximately 0.5 miles south of where Route 2 crosses the Buffalo River along 110th Street North (CSAH 19) and approximately 0.5 miles north of where Route 2 would enter the city limits of Glyndon. The Route 2A alignment would proceed west from the intersection of 110th Street North (CSAH 19) and 15th Avenue North (CR 84) for approximately 0.5 miles to 110th 100th Street North and proceed south for one mile. Route 2A would need to be located on the east side of ~~110th~~ 100th Street North to avoid two existing farms on the west side of the road. Route 2A would then continue south and cross U.S. Highway 10 and an intermittent stream. South of U.S. Highway 10, Route 2A would follow ~~110th~~ 100th Street South (CSAH 17) for approximately 1.25 miles. This road, ~~110th~~ 100th Street South (CSAH 17), comprises the western boundary of the city limits of Glyndon. Route 2A would be located on the east side of ~~110th~~ 100th Street South (CSAH 17) to avoid an existing residence on the west side of the road. Approximately 0.25 miles south of 12th Avenue South, Route 2A would turn east. At this point, the HVTL would be located along the southern boundary of the Glyndon city limits. Route 2A would travel east for approximately 0.5 miles to the center of the section, where it would encounter the former BNSF Railway right-of-way. Route 2A would travel southeast for approximately 1.0 miles where it would rejoin Route 2.
- **ALJ Finding of Fact 44 is modified as follows:** 44. In light of recent studies, including “Public Health Impacts of Wind Turbines,” prepared by the Minnesota Department of Health, May 22, 2009, the Commission is gathering information to determine if current permit conditions on setbacks remain appropriate and reasonable ~~may wish to consider increasing the distance that a wind turbine may be placed from a residence to reduce or eliminate low frequency noise, or introduce vegetative or other barriers.~~ The Pollution Control Agency’s noise standards (a decibel exceedance standard) do not fully account for low frequency noise. ~~The EIS discusses the Department of Health Study and suggests that additional mitigation should be addressed in the permitting process.~~

The motion was adopted, 4-0.

There being no further business, the meeting was adjourned.

**APPROVED BY THE COMMISSION: JANUARY 27, 2010**



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**Burl W. Haar, Executive Secretary**