

November 5, 2019

Daniel Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: EERA Comments and Recommendations
Site Permit Application Completeness
Three Waters Wind Farm, Jackson County, Minnesota
Docket No. IP-7002/WS-19-576

Dear Mr. Wolf,

Attached are comments and recommendations of Department of Commerce, Energy
Environmental Review and Analysis (EERA) staff in the above matter.

Three Waters Wind Farm, LLC has submitted an application pursuant to Minnesota Rule
7854.0400 for a Site Permit for a 201 megawatt wind project in Jackson County, Minnesota.

This filing was made on September 30, 2019 by:

Michael Rucker, Manager
Scout Clean Energy LLC
dba Three Water Wind Farm, LLC
4865 Sterling Drive, Suite 200
Boulder, CO 80301

These comments are based on EERA staff review of the Site Permit Application and the record
to date. Staff is available to answer any questions the Commission may have.

Sincerely,



Richard Davis
EERA Staff

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF
MINNESOTA DEPARTMENT OF COMMERCE
ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS STAFF**

DOCKET No. IP-7002/WS-19-576

Date: November 5, 2019

EERA Staff: Richard I. Davis 651-539-1846

In the Matter of the Application of Three Waters Wind Farm, LLC for a Large Wind Energy Conversion System (LWECS) Site Permit for the 201 MW Three Waters Wind Farm in Jackson County, Minnesota.

Issue(s) Addressed: These comments address whether the Application:

- Should be accepted as providing complete information per Minnesota Rule 7854.0500 sufficient to begin the Site Permit review process.
- Process considerations should be made at this time.
- Should be processed jointly with the certificate of need.
- Contains any contested issues of fact.

Additional documents and information can be found on the EERA website

<https://mn.gov/eera/web/project/13761/> or on eDockets

<https://www.edockets.state.mn.us/EFiling/search.jsp> (Year "19" and Number "576").

This document can be made available in alternative formats; i.e. large print or audio tape by calling (651)539-1530.

Introduction and Background

Three Waters Wind Farm, LLC (Applicant) filed an Application¹ with the Public Utilities Commission (Commission) for a Large Wind Energy Conversion System (LWECS) Site Permit on September 30, 2019, to build and operate the Three Waters Wind Farm (Project) in Jackson County, Minnesota. The Applicant completed the initial filing of the majority of the LWECS Site Permit Application on September 30, 2019 with three exceptions:

1. The initial filing of Appendix D – Preliminary Noise Compliance Assessment Report was filed in eDockets on October 10, 2019.²
2. A corrected revised Figure 8 of the Site Permit Application was filed in eDockets on October 11, 2019.³
3. The initial filing of Appendix G – Cultural Resources Literature Review of the Site Permit Application had to be removed from eDockets on October 8, 2019 due to the inclusion of non-public data. The Applicant filed a revised Appendix G – Cultural Resources Literature Review in public and trade secret versions on October 22, 2019.⁴

Three Waters Wind Farm, LLC is a wholly owned subsidiary of Scout Clean Energy, LLC.

The Applicant is required to obtain a Certificate of Need (CN) for the Project, and a CN Application⁵ was filed on July 31, 2019. The Commission issued an Order⁶ accepting the CN Application on October 23, 2019. The entire record for the Three Waters Wind Farm CN can be found under Docket #CN-19-154.

Project Location

Lakefield is the closest community to the Project. The Project is located in Ewington, Round Lake, Sioux Valley, Rost, Hunter, and Minneota Townships in Jackson County, Minnesota. The Applicant also holds land lease options in Osceola and Dickinson Counties, Iowa, which may be utilized if alternate turbine locations are needed.

Project Description

The Project Area encompasses approximately 48,087 acres, of which the Applicant has currently secured approximately 21,813 acres of land under lease and/or easement. Additional lands will be secured under lease and/or easement, as necessary, prior to permit issuance. The Iowa portion of the Project Area is approximately 11,000 acres in size.

¹ Site Permit Application and associated Figures and Appendices, Three Waters Wind Farm, LLC Main Document of Site Permit Application, eDocket #[20199-156208-01](#).

² Appendix D – Preliminary Noise Compliance Assessment Report, Three Waters Wind Farm, LLC, eDocket #[201910-156298-01](#)

³ Corrected Revised Figure 8, Three Waters Wind Farm, LLC, eDocket #[201910-156499-02](#)

⁴ Revised Appendix G – Cultural Resources Literature Review (Public Version), Three Waters Wind Farm, LLC, eDocket #[201910-156813-02](#)

⁵ Certificate of Need Application, Three Waters Wind Farm, LLC, eDockets #[20197-154854-02](#).

⁶ Order Accepting the Certificate of Need Application, Commission, eDocket #[201910-156842-01](#).

The Project for which a permit is being requested includes the following components in Minnesota:

1. A wind turbine layout consisting of 71 primary turbines and eight alternate turbine locations.
2. Associated facilities, including;
 - a. gravel access roads
 - b. underground electrical power collection system and communications system
 - c. up to two permanent meteorological towers
 - d. project substation facility
 - e. temporary construction areas; crane paths, pull sites, access roads, concrete batch plant, and a staging/laydown area
 - f. operations and maintenance (O&M) facility
 - g. 1,500 foot long, or less, 345 – kV transmission line from the Project substation to the point of interconnect (POI)
 - h. Switchyard adjacent to the Project substation and transmission line POI
 - i. Aircraft Detection Lighting System (ADLS), as approved by the Federal Aviation Administration (FAA)

Construction of the Project is anticipated to begin in late 2020, and achieve commercial operation in the fourth quarter of 2021.

Regulatory Process and Procedures

A site permit from the Commission is required to construct an LWECS, which is any combination of wind turbines and associated facilities with the capacity to generate five megawatts or more of electricity. This requirement became law in 1995. The Minnesota Wind Siting Act is found at Minnesota Statutes Chapter 216F. The rules to implement the permitting requirements for LWECS are in Minn. Rule 7854.

The Jackson County Zoning Ordinance (JCZO), Section 734, establishes Jackson County as the permitting authority for wind energy facilities that generate less than 25 megawatts (MW). Because the Three Waters Wind Farm is anticipated to generate 201 MW the Commission is considered the primary permitting authority.

Application Acceptance

Application acceptance is guided by Minnesota Rule 7854.0600. The Commission may elect to accept, conditionally accept, or reject the Application. If the Commission conditionally accepts or rejects an application, the Commission must advise the Applicant of the deficiencies in the application and the manner in which the deficiencies can be addressed.

Within 15 days of LWECS site permit application acceptance, the Applicant is required to provide notice of application acceptance. In addition to publishing this notice in a newspaper of general circulation in each county, the notice is distributed to the county board, each city council and each township board in each county where the LWECS is proposed to be located. This notice is also posted on eDockets and on the Department of

Commerce Energy Environmental Review and Analysis (EERA) website. In practice this notice has been developed by the Applicant with assistance from EERA staff to ensure that the notice meets the requirements and intent of Minnesota Rule 7854.0600.

As a part of the notice requirements of Minnesota Rule 7854.0600, the Applicant must provide a copy of the accepted Application to each landowner within the site. The Applicant is also required to distribute the accepted application to the Minnesota Historical Society, the regional development commission(s) within which the LWECS is proposed to be located, the auditor of each county, and the clerk of each city and township in which the LWECS is proposed to be located. The auditors and clerks are to retain the application and make it available for public inspection on request. In practice, the Applicant also provides a copy of the application to anyone requesting a copy. The Applicant is responsible for maintaining the application distribution list.

In previous projects, EERA staff has also distributed copies of the application to technical representatives from state agencies (e.g., Pollution Control Agency, Department of Natural Resources, Department of Transportation, Board of Water and Soil Resources, Department of Agriculture, and Department of Health) that may have permitting or review authority over the project and established a comment period to allow for public and agency input to its technical analysis of whether a draft site permit should be issued.

Preliminary Determination on Draft Site Permit

Minnesota Rule 7854.0800 states, “Within 45 days after acceptance of the application by the Commission, the Commission shall make a preliminary determination whether a permit may be issued or should be denied. If the preliminary determination is to issue a permit, the Commission shall prepare a draft site permit for the project. The draft site permit must identify the permittee, the proposed LWECS, and proposed permit conditions.”

Issuing a draft site permit does not confer any authority to construct an LWECS. The Commission may change, amend or modify the draft site permit in any respect before final issuance or may deny the site permit at a later date.

EERA Staff Analysis and Comments

The Application has been reviewed by EERA staff pursuant to the requirements of Minnesota Rule 7854 (Wind Siting Rules). The Application provides the information required by Minnesota Rule 7854.0500 in a format that all members of the public can access.

The Applicant developed the Application with the assistance of the EERA guidance document⁷ for LWECS permits. This guidance for site permitting provides applicants and preparers of LWECS applications with information on how to prepare a complete site permit application, including information on the permitting process, pre-application consultation, and how to submit an application. While this document is a useful tool for new developers, it is also helpful to developers with experience in Minnesota, to review current policies, guidelines and expectations as to necessary study standards.

⁷ Application Guidance for Site Permitting of Large Wind Energy Conversion Systems (LWECS) in Minnesota, DOC-EERA, July 2019. <https://mn.gov/eera/web/doc/13655/>

The Applicant submitted a draft Application for review in September 2019. EERA reviewed the document and provided comments and recommendations to the Applicant prior to the initial eDocket filing. The Applicant has edited and supplemented the Application, somewhat following EERA's initial review recommendations before making their official filing on September 30, 2019. EERA finds the updated Application generally addresses the EERA comments and recommendations provided to the Applicant prior to their initial filing.

Overall, the Application includes the contents anticipated by rule; however, EERA notes one area that it believes will need further development in the record prior to Notice of the Public Information Meeting.

Section 6.1 Project Layout and Setbacks

Table 6 in the Application identifies turbine setback distances from various features, and references the permitting authority that holds the setback standard. Some of the identified setbacks discussed in Table 6 could use further discussion and clarification, as the setback standards typically included in a Commission issued Site Permit and the JCZO differ.

1. Participating Project Boundaries – The JCZO, Section 734.5, indicates a turbine setback distance from participating project boundaries equal to the total height of the structure including blades. The Applicant has indicated this project setback is not applicable, which does not seem accurate. The Applicant's proposed turbine setbacks from the participating project boundaries would be expected to exceed the distance equal to the total turbine height, including blades, because the wind access buffer required by the Site Permit will exceed those distances.
2. Public Roads and Recreational Trails – The JCZO, Section 734.5 indicates a turbine setback distance of total height of the structure including the blades, 499 feet or 584 feet depending on hub height selected. Site Permits issued by the Commission typically require a setback of 250 feet from public roads and recreational trails. The Applicant has indicated that they will utilize a turbine setback distance of 250 feet from public roads and recreational trails.
3. Wetlands (Cowardin classification Types III, IV, and V) – The JCZO, Section 734.5, indicates a setback distance of total height of the structure including the blades, 499 feet or 584 feet depending on hub height selected. The Applicant has indicated that they will be avoiding wetlands, and does not indicate a specific setback distance.

EERA recommends that the Applicant provide some clarification as to why the participating project boundaries setbacks are considered not applicable. EERA also recommends that the Applicant provide more detail as to how many of the proposed turbine locations would be impacted by the more stringent setbacks for public roads, recreational trails, and wetlands, as identified in JCZO, Section 734.5. The Applicant should also provide some rationale explaining the selection of the less stringent setback distances.

This omission is likely not a major issue, but rather a point of clarification EERA wanted to bring to the Commission attention. This additional detail will add clarity to the Project record.

EERA Conclusions and Recommendation

Application Completeness

EERA concludes that the Application provides complete information per Minnesota Rule 7854.0500 sufficient to begin the Site Permit review process. EERA staff is requesting that the Commission direct the Applicant to honor requests for additional information as necessary to facilitate the review process and development of a draft Site Permit.

EERA recommends the Commission accept the Application as complete with the understanding that the permitting process will not progress to the point of Notice of the Public Information Meeting until the issues identified previously, regarding turbine setback details have been developed in the record.

Process Considerations - Rule Variance - Draft Permit Issuance

EERA is requesting a rule variance, that the Commission vary the procedural requirements of Minn. Rule 7854.0800, which requires a preliminary determination on whether to issue a Site Permit within 45 days of application acceptance. EERA believes additional time is appropriate to accommodate an EERA public informational meeting, and to allow interested persons time to comment on the application and issues to be considered in development of a draft Site Permit for the Project.

Minnesota Rules, part 7829.3200 allows the Commission to grant a variance to its rules when it determines the following three conditions are met:

- A. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. Granting the variance would not adversely affect the public interest; and
- C. Granting the variance would not conflict with standards imposed by law.

EERA staff believes the conditions for a variance are met in this case, and over the past several years the Commission has found this variance is appropriate, beneficial, and in compliance with the three-factor variance test.

First, the enforcement of the rule would impose an excessive burden on EERA staff because of the short time available between application acceptance and the time a draft Site Permit must be addressed by the Commission. EERA staff practice over the past few years has been to include an additional comment period to allow for public and governmental agency input on the site permit application prior to the Commission's preliminary determination on whether a site permit may be issued. EERA staff believes that 45 days is inadequate to allow a reasonable comment period, review any comments received, and, where appropriate, incorporate comments into the draft Site Permit for Commission consideration.

Second, granting the variance will not adversely affect the public interest. Granting the variance would better serve the public interest by allowing adequate opportunity for interested persons to review and comment on the application.

Third, EERA staff does not believe granting the variance would conflict with standards imposed by law.

EERA staff is not aware of any opposition to the draft Site Permit variance being requested, and the variance has been a typical practice in the most recent wind dockets under consideration by the Commission.

Joint Processing of Certificate of Need and Site Permit

EERA recommends that the Certificate of Need and Site Permit processes be combined at the earliest logical point to improve staff efficiencies, and to improve public involvement. EERA will work with the Applicant and Commission staff to coordinate the schedules of the Certificate of Need and Site Permit processes.

Contested Issues of Fact

EERA staff is not aware at this time of any contested issues of fact with respect to the information provided in the Site Permit Application. However, issues may be identified during the public and agency comment period, and if so these issues will be addressed within the project docket.

EERA staff recommends that the Commission delay the decision on whether to refer the Project to the OAH for a contested case hearing until the draft Site Permit stage. Development of the draft Site Permit will provide insight into the potential Project impacts, and clarity as to the appropriate Site Permit conditions to be included. Depending on the outcome of that process, the Commission can determine whether a contested case hearing will aid in making their final determination on the Site Permit Application.