

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CLIPPER WINDPOWER DEVELOPMENT COMPANY, INC.	DOCKET NO. WRU-08-23-3886
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ORDER GRANTING WAIVER WITH CONDITIONS

(Issued August 7, 2008)

On June 6, 2008, Clipper Windpower Development Company, Inc. (Clipper Windpower), filed with the Utilities Board (Board) a request for waiver of the generating certificate requirements of Iowa Code chapter 476A and 199 IAC 24 and the notice requirements in 199 IAC 24.6(2). The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to the waiver request on June 26, 2008.

Clipper Windpower seeks to construct a 50 MW wind energy project in Carroll County, Iowa; the project may be increased to 70 MW, depending on the needs of Corn Belt Power Cooperative (Corn Belt). All of the project's output will be sold to Corn Belt pursuant to a 25-year purchase power agreement. The wind project will be spread over 12 square miles and will consist of 20 to 28 2.5 MW Clipper next generation "Liberty" turbines assembled at Clipper Windpower's Cedar Rapids facility. The output will be collected through a network of gathering lines operating at 34.5 kV and then delivered to interconnection facilities owned by Corn Belt. The

number of turbines connected to a single gathering line will be no more than ten, or exactly equal to 25 MW.

Clipper Windpower's planned project falls within the parameters of Board review under chapter 476A. Pursuant to the statute, a certificate must be obtained for any "facility" with a total capacity of 25 MW or more. Iowa Code § 476A.1(5). However, Iowa Code § 476A.15 grants the Board the authority to waive the requirements of chapter 476A for any size generation unit if it determines that "the public interest would not be adversely affected."

Clipper Windpower's project is subject to Board review only because the capacity of wind turbines connected to a single gathering or feeder line may be exactly 25 MW. If the capacity of wind turbines connected to each gathering or feeder line was less than 25 MW, the project would fall within the parameters of various declaratory rulings issued by the Board, which have held that if the capacity of turbines connected to a single gathering or feeder line is less than 25 MW, there is no "facility" as defined in Iowa Code § 476A.1(5). See MidAmerican Energy Company, "Declaratory Order," Docket No. DRU-03-3 (6/6/03); Flying Cloud Power Partners, LLC, "Declaratory Order," Docket No. DRU-03-2 (2/10/03).

In analyzing whether a waiver should be granted, the decision criteria for issuing a generating certificate must be examined. The three criterion in Iowa Code § 476A.6 are (1) whether the facility is consistent with legislative intent, the economic development policy of the state, and will not be detrimental to provision of adequate

and reliable electric service, (2) whether the applicant will construct, maintain, and operate the facility pursuant to the provisions of a certificate, and (3) whether the construction, maintenance, and operation of the facility are consistent with reasonable land use and environmental policies. The waiver request contains sufficient information with respect to the first criterion because of Iowa's stated legislative policy in Iowa Code § 476.41 to "encourage the development of alternate energy production facilities...in order to conserve our finite and expensive energy resources and to provide for their most efficient use." In addition, Iowa Code § 476.53 states that it is the intent of the General Assembly to attract electric power generating facilities to the state. The proposed project also supports economic development policies by creating jobs and improving the energy infrastructure. Also, the turbines will be assembled at Clipper Windpower's Cedar Rapids facility.

The first criterion also requires consideration of the effect of the proposed project on the transmission system. Clipper Windpower will have to deal with the Midwest Independent Transmission System Operator, Inc. (MISO), or other appropriate entities regarding interconnection of the wind facilities to the transmission grid. On May 12, 2008, Corn Belt completed a system impact study that addressed the project's impact at both the 50 MW and 70 MW levels, concluding that area stability would not be adversely impacted. However, the study does recommend mitigation of certain constraints prior to interconnection, including a new 69 kV switching station and other transmission system upgrades, at a cost of \$2 million to

\$6 million. A copy of the study was filed with the Board. Consumer Advocate states in its response that it has no objection to Clipper Windpower's waiver request, assuming it abides by the recommendations contained in the system impact study.

As a condition of this waiver, Clipper Windpower will be required to abide by the recommendations of the system impact study and receive the proper interconnection approvals from MISO or other appropriate entities. Clipper Windpower will also be required to comply with the terms and conditions of all current and future transmission authorization given by each entity having authority over interconnection and utilization of the transmission system by the proposed facility. Finally, Clipper Windpower will be required to file with the Board every six months a project status update for each turbine installation, with the final report being due upon the project's completion. The filings should include information on site selection, status of work for each installation, status of on-site and off-site transmission network upgrades, and the costs of the transmission upgrades.

The second criterion is of little importance in this case. A certificate, if required, would merely state that Clipper Windpower must comply with applicable law. Clipper Windpower is subject to statutory requirements regardless of whether an actual certificate is issued. For example, Iowa Code § 476A.2(2) provides that Board approval must be obtained for a significant alteration to a facility. Granting this waiver will not exempt Clipper Windpower from this or any other statutory requirement with respect to its future activities.

The final decision criterion relates to environmental and land use factors. Environmental permits are primarily the responsibility of the Iowa Department of Natural Resources (IDNR) and the Board has traditionally deferred to IDNR's expertise in these areas and has found this criterion satisfied if IDNR issues the appropriate permits. Clipper Windpower states that it has been in contact with IDNR and other appropriate agencies regarding necessary permits. Clipper notes that it has obtained wind easements from landowners upon whose property the turbines will be placed.

The Board finds that the waiver request adequately addresses the decision criteria for a generating certificate and will therefore waive the requirements of chapter 476A. The Board issued an identical waiver for another recent wind power project. See Endeavor Power Partners, LLC., "Order Granting Waiver With Conditions," Docket No. WRU-06-10-3887 (3/17/2006). The waiver will not detrimentally affect the public interest. However, the Board reminds Clipper Windpower that it must obtain any other applicable environmental permits and comply with any other state and local regulations, such as applicable zoning or land use restrictions.

Clipper Windpower also asked for a waiver of certain notice requirements. Clipper Windpower cited 199 IAC 24.6(2), which deals with service of the acceptance of a siting application; this rule does not apply unless a generation siting application is filed and accepted by the Board. Clipper Windpower has not filed a siting

application, but a request for waiver from those statutory and rule requirements. The correct rule reference for waiver requests is 199 IAC 24.15, which requires that generation siting waiver requests be served on "all owners of record of real property that adjoins the proposed facility site." Clipper Windpower said that with a project covering 12-square miles, compliance with this requirement would pose an undue regulatory burden.

The rule in question was enacted in 2004 in response to a waiver request in late 2003 involving Western Minnesota Municipal Power Agency, which proposed to erect two gas turbines near Exira. The adjoining landowner appeared and was heard in the proceeding, but after the proceedings were concluded the Board determined that adjoining landowners should receive notice of the waiver filing because of the potential effect on their properties. See Western Minnesota Municipal Power Agency, "Order Affirming Proposed Decision and Order," Docket No. WRU-03-19 (9/17/03). However, the rule was not intended to apply to wind projects because up to the time the rule was adopted in 2004 and, in fact, until Endeavor Power Partner's request in Docket No. WRU-06-10-3837, all Iowa wind projects have been configured to fall within the Board's numerous declaratory rulings that the siting statutes do not apply if less than 25 MW of capacity are connected to a single gathering line.

Clipper Windpower in its request said it has obtained or will obtain all necessary private easements for its project. Clipper Windpower has also performed or is in the process of arranging for various environmental studies, including a

detailed wetlands study. Finally, Clipper Windpower points out that its project just meets the 25 MW threshold; if it were any less, there would be no Board action required.

The Board will grant the waiver. Wind projects do not present the same noise and environmental issues that gas or coal projects present. In addition, the expense of performing the abstract work to obtain names and addresses of property owners in a 12-square mile area would be burdensome. Finally, Clipper Windpower has obtained all wind easements from affected landowners. While published notice is an option the Board could order, there does not appear to be any value in requiring additional notice, particularly because private easements will have to be obtained before the project can go forward and Clipper Windpower could easily reconfigure the project to avoid the requirement altogether (although this may adversely affect the economics). Iowa's public policy is to encourage renewable generation. One way to do this is to reduce the regulatory burden on such projects when the regulations in question do not advance the public interest, as the Board has done in prior declaratory rulings. The standards for a waiver found in 199 IAC 1.3 have been satisfied.

IT IS THEREFORE ORDERED:

1. The request for waiver of the generating certificate requirements of Iowa Code chapter 476A and 199 IAC 24 filed by the Clipper Windpower Development Company, Inc., on June 6, 2008, is granted, conditioned upon Clipper

Windpower complying with the recommendations of the system impact study and receiving all appropriate interconnection, transmission, and any other approvals from appropriate reliability or regulatory authorities as set forth in the body of this order.

2. Clipper Windpower shall file every six months, until the project is completed, status reports with the information identified in the body of this order.
3. The notice requirements contained in 199 IAC 24.15 are waived.

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 7th day of August, 2008.