

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: WISCONSIN PUBLIC SERVICE CORPORATION | DOCKET NO. WRU-08-34 |
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**ORDER GRANTING WAIVER WITH
CONDITIONS AND REQUIRING FILINGS**

(Issued November 3, 2008)

On September 4, 2008, Wisconsin Public Service Corporation (WPS), 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). On September 24, 2008, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response and conditional objection. WPS filed a reply to Consumer Advocate's response on October 8, 2008. Consumer Advocate withdrew its conditional objection on October 27, 2008.

WPS intends to develop a 99 MW wind energy facility in Howard County, Iowa, known as the Crane Creek Wind Project (Project). The Project will be constructed on a turnkey basis by enXco, an affiliate of EDF Energies Nouvelles. In addition to 66 1.5 MW General Electric wind turbines, the Project will include two meteorological towers, access roads, an operations and maintenance center, communication lines, electric substation lines, and electric collector lines. The

Project will be spread over approximately 29 square miles and no single collection line will have a total capacity exceeding 27 MW. WPS will purchase the Project from enXco when it is completed and plans to use the energy to comply with Wisconsin's renewable portfolio requirements, which generally mandate that 10 percent of all energy used in the state be supplied by renewable energy by 2015.

WPS's planned project falls within the parameters of Board review under Iowa Code 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."

WPS's project is subject to Board review only because the capacity of wind turbines connected to a single gathering or feeder line may exceed 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.

Consumer Advocate's conditional objection focused on the first decision criteria, whether the facility is consistent with the legislative intent as expressed in Iowa Code § 476.53 and will not be detrimental to the provision of adequate and reliable electric service in Iowa, including the effect of the proposed project on transmission. Consumer Advocate noted that while WPS's project is consistent with renewable energy development policies and would add diversity to the Midwest's generation mix, the project does not advance Iowa's legislative intent to attract electric power generating facilities in sufficient quantity to ensure reliable electric service to Iowa customers; Consumer Advocate said it was important to ensure that WPS's project will not adversely impact the quality of service to Iowa consumers.

Consumer Advocate pointed out that in WPS's waiver request, WPS acknowledged that not all of the transmission studies had been published. Therefore, Consumer Advocate argued, it cannot yet be concluded that the proposed

project will not adversely impact service quality to Iowa consumers. Consumer Advocate argued that a waiver should not be granted until WPS provides all transmission studies that evaluate the impacts of the project's interconnection or address recommended or required actions to assure that WPS's project will not adversely impact service quality to Iowa consumers.

In its October 8, 2008, reply to Consumer Advocate's conditional objection, WPS agreed to the following waiver conditions, if imposed by the Board: 1) the generator will 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 generation facility; 2) the generator will file with the Board copies of all studies that it conducts to comply with the requirements of the Midwest Independent Transmission System Operator, Inc. (MISO), or other appropriate entities, once they are completed, including all studies to evaluate the impacts of interconnecting the proposed project, or that the generator will abide by the recommendations of the MISO system impact study if the study has been completed; and 3) the generator will file with the Board, every six months, a project status update for each turbine installation with the final report due on the project's completion. WPS is currently engaged in interconnection negotiations and said it will file the interconnection agreement with the Board when it is complete. WPS also provided supporting references to the MISO-published feasibility study, system impact study, and facilities study.

On October 27, 2008, Consumer Advocate withdrew its conditional objection. Consumer Advocate said the additional information provided by WPS in its reply enabled Consumer Advocate to review and verify the transmission upgrades indicated by WPS as necessary to support its Project. Also, as a result of further communications between Consumer Advocate and WPS, Consumer Advocate was advised that the other significant limitations identified in the system impact studies were not actual limitations, but were modeling errors identified by the transmission owner. As a result, WPS anticipates no upgrades or mitigation steps will be necessary for the Rice-Saratoga-Jerico 69 kV or Beaver Creek-Rice 161 kV injection/deliverability points. Consumer Advocate urged the Board to condition the grant of WPS's waiver request on the conditions to which WPS agreed in its October 8, 2008, reply, including its agreement to file the interconnection agreement for the Project when it is complete.

In considering the waiver request, the Board considers the information contained in WPS's October 8, 2008, reply as a supplement to the initial request. 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. Even though the energy will be

sold to WPS's customers in Wisconsin, the Midwest Greenhouse Gas Reduction Accord, signed by Iowa's governor in 2007, recognizes the need for regional cooperation to help the Midwest maximize the region's energy advantages, including world-class wind energy resources in portions of the Midwest. The Project also supports economic development policies by creating jobs and improving the overall energy infrastructure.

The first criterion also requires consideration of the effect of the proposed project on the transmission system. WPS and enXco will have to deal with MISO in order to obtain interconnection services. While the system impact study showed several injection and deliverability constraints that would require mitigation prior to interconnection, additional information that was provided showed that this was not the case and that the initial conclusions were based on modeling errors.

As a condition of this waiver, WPS will be required to abide by the conditions set forth in its October 8, 2008, reply, which include that WPS will receive all proper interconnection approvals from MISO or other appropriate entities. WPS will also be required to comply with the terms and conditions of all current and future transmission authorizations given by each entity having authority over interconnection and utilization of the transmission system by the proposed facility. In addition, WPS 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. Finally, WPS will be required to file the Project's interconnection agreement when it is completed.

The second criterion is of little significance in this case. A certificate, if required, would merely state that WPS must comply with applicable law. WPS 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 WPS 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. WPS states that it has been in contact with IDNR and other appropriate agencies regarding necessary permits. WPS notes that it has obtained 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 similar waivers for other recent wind power projects. See, Clipper Windpower Development Company, Inc., "Order Granting Waiver With Conditions," Docket No. WRU-08-23-3886 (8/7/2008); 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 WPS that it must obtain any other applicable environmental permits and comply with any other federal, state, and local regulations, such as applicable zoning or land use restrictions.

WPS also asked for a waiver of the notice requirements in 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." WPS said that with a project covering 29 square miles, compliance with this requirement would pose an undue 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, Iowa. 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 similar waiver filings in the future 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.

WPS in its request said it has obtained easements from the property owners on whose land the Project's turbines will be placed. WPS has also performed or is in the process of arranging for various environmental studies, including a detailed wetlands study. Finally, WPS points out that its project will exceed the 25 MW threshold by at most 2 MW; if it were any less than 25 MW per gathering line, 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 29-square-mile area would be burdensome. Finally, WPS has obtained all wind easements from landowners on whose land turbines will be placed. While published notice is an option the Board could order, there does not appear to be any value in requiring additional notice at this time, particularly because private easements will have to be obtained before the project can go forward and WPS could easily reconfigure the Project to avoid the requirement altogether (although this might adversely affect the Project's 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 Wisconsin Public Service Corporation on September 4, 2008, as supplemented on October 8, 2008, is granted, conditioned upon WPS complying with the conditions contained in its October 8, 2008, reply and this order, including the filing of the Project's interconnection agreement when it is completed.
2. WPS 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 3rd day of November, 2008.