

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of the Site Permit Issued to the Wisconsin Power and Light Company for the Bent Tree Wind Project in Freeborn County, Minnesota

ISSUE DATE: June 5, 2018

DOCKET NO. ET-6657/WS-08-573

ORDER DISMISSING COMPLAINT
AND FEBRUARY 18, 2018 MOTION
WITH CONDITIONS

PROCEDURAL HISTORY

On October 20, 2009, the Commission issued a large wind energy conversion system (LWECS) site permit to Wisconsin Power and Light Company (WPL) for the approximately 200-megawatt first phase of the Bent Tree Wind Project (the Project), located in Freeborn County. The Project commenced commercial operation in February 2011.

On August 24, 2016, the Commission issued an order requiring noise monitoring and a noise study at the Project site.

During the period of September 2016 through February 2018, Bernie and Cheryl Hagen, landowners within the Project area, filed approximately 20 letters regarding health effects that they claim were caused by the Project. David Langrud, another landowner within the Project area, filed five letters during that time, two in conjunction with the Hagens (the Hagens and the Langruds are jointly referred to as the Landowners).

On September 28, 2017, Department of Commerce Energy Environmental Review and Analysis Unit (EERA) filed a post-construction noise assessment report for the Project (Phase 1 Report)¹ identifying 16 hours of non-compliance with Minnesota Pollution Control Agency (MPCA) ambient noise standards during the two-week monitoring period.

On October 11, 2017, WPL filed a letter disputing the analysis in the Phase 1 Report and arguing the Project remains in compliance with noise requirements.

On February 7, 2018, EERA filed a Phase 2 post-construction noise assessment report (Phase 2 Report) concluding that certain Project turbines are a significant contributor to exceedances of MPCA ambient noise standards at certain wind speeds.

¹ The Phase 1 and Phase 2 Noise Assessment Reports were prepared by DNV-GL.

On February 8, 2018, WPL filed a letter informing the Commission that it would respond to the Phase 2 Report at a later date and would immediately curtail three turbines that are part of the Project, two that are identified in the Phase 2 Report as T132 and T397, and located in the vicinity of the Hagen Property and one that is identified as T362 and located in vicinity of the Langrud property.

On February 20, 2018, the Landowners filed a *Motion for Order to Show Cause and for Hearing*, requesting that the Commission issue an Order to Show Cause why the site permit for the Project should not be revoked, and requesting a contested-case hearing on the matter.

On March 23, 2018, the Commission issued an *Order to Show Cause, Requiring Further Review by the Department of Commerce, and Continuing Curtailment*.

On April 19, 2018, WPL filed with the Commission a *Notice of Confidential Settlement Agreement and Joint Recommendation and Request*, under which, among other provisions: (1) WPL shall purchase each Landowner's property; (2) each Landowner shall enter into a Neighbor agreement and Easement that shall be binding on any future owners of the property; and (3) each Landowner shall release any and all past, present, and future claims against WPL. The Confidential Settlement Agreement provides that it is contingent on the Commission issuing a written order specifying the terms under which WPL agrees to take possession of the properties.

On April 30, 2018, WPL filed a response to the *Order to Show Cause*.

On May 1, 2018, the EERA filed comments on the Confidential Settlement Agreement, indicating no opposition to the request to dismiss the Complaint and terminate curtailment, nor to the condition that further noise monitoring related to Turbine Nos. T132, T397, and T362 not be required based upon the Phase 1 and Phase 2 Reports.

On May 17, 2018, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. The Confidential Settlement Agreement

WPL has entered into a Confidential Settlement Agreements with each Landowner, by which the parties agree to the terms of sale of their properties to WPL, execution of easements on the property, and a release of all the Landowners' claims against WPL. The Agreement also outlines the terms by which the Agreement would be executed. The finality of the Confidential Settlement Agreements is conditioned on the Commission making specific findings on which the parties and the Department agree. These findings include, among others:

- Dismissal of the Landowners' February 20, 2018 motion and all noise-related complaints filed in this matter;
- Termination of the required curtailment of turbines T132, T397, and T362 based on the Phase 1 and 2 Reports;

- Transfer of possession of each property to WPL; and
- Requiring a compliance filing be filed with the Commission.

Finally, the settlement states that the Commission will require no further sound monitoring at any location pertaining to Bent Tree on the basis of the Phase 1 and Phase 2 Reports.

II. EERA Comments

After review and analysis of the parties' April 19, 2018 filing, the EERA did not object to the proposed Confidential Settlement Agreement. The EERA noted, however, that any new residents could not waive WPL's duty to meet noise standards even if they may be willing to live with violations of the Minnesota Pollution Control Agency's ambient noise standard in exchange for payment or through some other agreement. The EERA cautioned that the noise compliance issue would likely need to be reopened if the Hagen or Langrud properties were returned in the future to residential use.

III. Commission Action

After its own review, and with modifications set forth below related to the possibility of the potential future sale of the properties for residential use, the Commission finds that resolving this dispute and the terms of the Confidential Agreement are in the public interest and will result in a reasonable and prudent resolution of the issues raised in the Landowners' Complaints. While WPL stated at the hearing that it had no plans to occupy or sell the properties in the immediate future, it would not object to conducting a new noise study in the future prior to residential occupancy should the likelihood of such use arise. Therefore, the Commission will add the conditions listed in Ordering Paragraphs 6 (A)-(D) below.

Finally, in resolving this matter the Commission recognizes that under the terms of the Confidential Settlement Agreement, no party has made any admissions of law and/or fact. Accordingly, the Commission will approve the Confidential Settlement Agreement as filed, with the modifications as set out below.

ORDER

1. The prior and current Langrud and Hagen complaints are deemed resolved under the terms of Wisconsin Power and Light's Site Permit for the Bent Tree Wind Project Phase I Project. At the request of the settling parties, the complainants' February 20, 2018 Motion and all of the Landowners' complaints in this matter are dismissed.
2. The required curtailment of turbines T132 and T397 based on the Phase 1 and 2 Sound Reports shall terminate on the date on which the Hagens transfer possession of their property to WPL.
3. The required curtailment of turbine T362 based on the Phase 1 and 2 Sound Reports shall terminate on the date on which the Langruds transfer possession of their property to WPL.

4. WPL shall file with the Commission within 30 days of the transfer of possession of each property a compliance filing indicating the date of commencement of operations of the turbines associated with that property.
5. The Commission will not require any further sound monitoring at any location pertaining to Bent Tree on the basis of the Phase 1 and Phase 2 Reports.
6. Upon the sale of either the Langrud or Hagen property, WPL shall file with the Commission notification of the sale and indicate whether the property will be used as a residence. If the property is intended to be used as a residence after sale or upon lease, the permittee shall file with the Commission:
 - A. Notification of the sale or lease;
 - B. Documentation of present compliance with noise standards of turbines T132, T397, and T362;
 - C. Documentation of any written notice to the potential residence of past noise studies alleging noise standard exceedances, and if applicable, allegations of present noise standard exceedances related to the property; and
 - D. Any mitigation plans or other relevant information.
7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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