

**STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE APPLICATION OF)	PRB-3777-G
COTTONWOOD WIND PROJECT, LLC,)	
HEADQUARTERED IN JUNO BEACH, FLORIDA,)	
REQUESTING AUTHORITY TO CONSTRUCT)	
AN 89.5 MEGAWATT WIND TURBINE ELECTRIC)	ORDER
GENERATION FACILITY AND RELATED)	
FACILITIES IN WEBSTER COUNTY, NEBRASKA.)	

On the 12th day of September, 2014, the above-captioned matter came on for consideration before the Nebraska Power Review Board (“the Board”). The Board, being fully advised in the premises, and upon reviewing said application and the evidence presented to the Board at said hearing, HEREBY FINDS AS FOLLOWS (references to testimony are designated by a “T” followed by the transcript page, then the lines upon which the testimony appears, while references to exhibits are designated by “Exh.”):

Lichter, Reida and Grennan, participating.

FINDINGS OF FACT

1. That on August 29, 2014, Cottonwood Wind Project, LLC (“Cottonwood Wind”) filed an application with the Board requesting authorization to construct an eighty-nine and one-half (89.5) megawatt wind turbine electric generation facility and necessary related facilities. Cottonwood Wind estimated that the facility would consist of approximately fifty-two (52) wind turbines. (Exh. 1). The application was designated “PRB-3777-G.”

2. The proposed 89.5 megawatt generation facility would be located in an area approximately three miles south of the City of Blue Hill, in Webster County, Nebraska. (Exh. 1, page 4; Exh. 11, pages 9 and 10). There are no other wind generation facilities in the area where the project would be located. The nearest wind generation facility is ninety miles from the project location. (T39:19 to 40:12).

3. That those power suppliers and entities, other than the applicant, that the Board deemed to be potentially affected by or interested in PRB-3777-G were the Nebraska Public Power District, the Omaha Public Power District, the City of Grand Island, the City of Hastings, the City of Holdrege, the City of Kearney, the City of Blue Hill, the City of Red Cloud, the South Central Public Power District, the Lincoln Electric System, and the Municipal Energy Agency of Nebraska. Written notice of the filing of the application and the hearing date was provided to these potentially interested parties and to Cottonwood Wind via certified U.S. mail (Exh. 2).

4. Notice of the filing and the opportunity to request to participate in the proceedings was provided to the general public by publication of notice in the *Blue Hill Leader* on September 4, 2014. (Exhs. 3 and 9). The *Blue Hill Leader* is a legal newspaper with circulation in the general area where the proposed generation facility would be located.

5. That the Omaha Public Power District (“OPPD”) filed a Petition for Intervention on September 10, 2014. (Exh. 4). The Hearing Officer granted OPPD’s intervention. (Exh. 5). That the Nebraska Public Power District (“NPPD”) filed a

Petition for Intervention on September 11, 2014. (Exh. 6). The Hearing Officer granted NPPD's intervention. (Exh. 7). No other Petitions for Intervention, Protests or Objections were filed with the Board concerning this application, and no alternate power supplier filed a Protest opposing the approval of the application. (T6:17-21).

6. That the City of Blue Hill and the South Central Public Power District each filed a Consent and Waiver form in which they indicated their consent to the Board's approval of the application and waived further notice in the matter. (Exhs. 10 and 14).

7. That pursuant to the requirement set out in Neb. Rev. Stat. § 37-807(3), the Board consulted with the Nebraska Game and Parks Commission ("the Commission") to ensure that the Board utilizes its authority in furtherance of the purposes of the Nebraska Nongame and Endangered Species Act, and to ensure that approval of the proposed generation facility and related facilities would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Commission to be critical. The Commission provided a letter to the Board dated September 11, 2014. The Commission's letter stated that the proposed location of the generation facility is within or near the range of the state listed endangered whooping crane (*Grus americana*). The facility would also be within the range of the northern long-eared bat (*Myotis septentrionalis*). The bat is not a state listed endangered or threatened species, but it is currently proposed to be listed as endangered by the U.S. Fish and Wildlife Service. If listed as

endangered by the U.S. Fish and Wildlife Service, it would automatically also become a state listed endangered species. (Exh. 8, page 2).

8. In its letter, the Commission found that there are records of whooping cranes in the vicinity of the project area, and records of northern long-eared bats in south-central and southeastern Nebraska. There is habitat for both species within or near the project area. The Commission provided a list of eighteen actions Cottonwood Wind has agreed to perform in order to evaluate, mitigate and/or minimize the chances that the proposed facility would have a negative impact on state listed endangered or threatened species, specifically the whooping crane, as well as the northern long-eared bat. The actions which Cottonwood Wind agreed to perform are set out in bullet point format in the Commission's letter. By way of examples, the measures include actions such as installing bird flight diverters at a spacing of 30 feet on the above-ground transmission lines that would be part of the project, minimizing the use of high-intensity night lighting where feasible, installing non-sodium vapor lights and/or down-shielded lights, and conducting two years of post-construction surveys to document avian nesting and breeding activity in the project. The surveys will include documentation of prairie grouse lekking activity within the project area. Construction activities will be avoided within ½ mile of active leks during breeding season. (Exh. 8).

9. Based on Cottonwood Wind's assurance that it would perform these and the other agreed-upon mitigation and conservation measures set out in the September 11 letter, the Commission determined that the project "May Affect, but is Not Likely to Adversely Affect" any state listed endangered species, and the Commission did not object to the Board's approval of the application. (Exh. 8).

10. Cottonwood Wind is a subsidiary of NextEra Energy Resources ("NextEra"). NextEra currently has 18,300 megawatts of generation in operation, with 10,000 megawatts of wind resources, 10,000 wind turbines, and 111 wind turbine generation facilities in operation in the United States and Canada, including a 74.8 megawatt wind turbine electric generation facility in Nebraska that began commercial operation in October 2013. (T23:6-15; Exh. 11, page 4). NextEra Energy Resources will fully finance the Cottonwood Wind project. (T29:19-20; Exh. 11, page 13).

11. The facility would interconnect with an existing NPPD 115 kilovolt ("kV") transmission line between the Pauline and Guide Rock substations, at a substation NPPD will build that is to be known as the "Rosemont Substation". (T25:9-13; Exh. 11, pages 9 and 14). The project would require a generation "tie-line" to move the electricity from the wind generation facility to the interconnection point with the proposed NPPD 115 kV substation. (T26:21 to 27:1). The tie-line would be no more than four and one-half (4.5) miles long. Cottonwood Wind would construct the tie-line, but would transfer ownership and operation of the line over to NPPD prior to commercial operation, at no cost to

NPPD. (T30:9-25; Exh. 11, page 14). Cottonwood Wind would pay all ongoing maintenance costs associated with the tie-line. (T38:3-10). The project would also involve construction of a collector substation near the center of the project area. The collector substation will be built and owned by Cottonwood Wind. (T29:24 to 30:5; Exh. 11, page 14). Cottonwood Wind has already fully funded the \$6.2 million necessary to accomplish the network upgrades needed in order to interconnect the proposed wind turbine generation facility. (T25:11-13; Exh. 11, pages 6 and 7). The project will also include various other related facilities, such as a gravel parking area and an operations and maintenance building. (T31:1-15; Exh. 11, page 15).

12. Cottonwood Wind intends to commence construction in April 2015. The plan is to have the facility begin commercial operation by December 2015. (T25:13-16; Exh. 11, page 6).

13. Cottonwood Wind has an execution-ready power purchase agreement with NPPD, whereby NPPD would agree to purchase the total electrical output from the proposed facility. If the agreement were executed, all electricity produced by the facility will be sold at wholesale to an electric utility operating in Nebraska, and the electricity would be used for consumption by Nebraska electric consumers. The NPPD Board of Directors authorized its management to negotiate a power purchase agreement with an entity for the output from a wind generation project, contingent on the facility qualifying for the federal production tax credit, with the amount of the power purchase agreement to be offset with an equivalent

amount of renewable credit financial agreements and subject to final approval by the NPPD Board of Directors. The proposed term for the power purchase agreement would be thirty years. (T24:13-15; T26:3-16; T44:3-5; Exh. 13, page 3). Cottonwood Wind informed the Board that construction of the facility is contingent on the execution of a power purchase agreement with a Nebraska electric power supplier. (T26:5-7; T29:16-18; Exh. 11, page 13).

14. Although the exhibits showed the proposed location of the turbines, Cottonwood Wind reserves the right to move turbines to alternate locations. All turbines would be located within the parameters of the project area shown on the applicable exhibits, though. (T27:6-19; Exh. 1, page 4; Exh. 11, pages 9 and 10).

15. The proposed facility will receive the federal production tax credit for the electricity produced by the project if the facility is completed by the end of 2015. (T32:8-9). NextEra qualified the project for the tax credit by expending five percent or more of the project's total expected capital expenditure prior to April 15, 2014. The expenditure involved was the purchase and receipt of four wind turbines allocated for the Cottonwood Wind project. (T32:12 to 33:9). The credit will greatly reduce the cost of the electricity that is ultimately intended for use by Nebraska electric ratepayers. The tax credit will contribute twenty-three (23) dollars per megawatt for the first ten years of the facility's commercial operation. (T32:9-12).

16. Cottonwood Wind collected wind resource data at the proposed facility's location using three meteorological towers over the past four years, and

an additional three towers beginning in August 2014. The results were average wind speeds in the top one percent of NextEra's entire wind generation fleet. This would lead to a production capacity factor in the mid-fifty percent range. (T33:20 to 34:11).

17. The price NPPD would pay for the electric output from the proposed facility and the amount of the annual escalation clause were provided to the Board in Exhibit 12. The contractual price for the electricity and the amount of the escalation clause were submitted by Cottonwood Wind as confidential information. Cottonwood Wind asserts that the pricing information constitutes proprietary, commercial and trade secret information which would provide a competitive advantage to its competitors if publicly released. The Board accepted Exhibit 12 without publicly disclosing it at the hearing to preserve its confidentiality under the provisions of Neb. Rev. Stat. section 84-712.05(3). Exhibit 12 was therefore submitted under seal and the Board will keep the pricing information confidential. (T14:15 to 16:13). NPPD's witness testified that the contractual price in the proposed power purchase agreement would be the lowest cost in a power purchase agreement into which NPPD would have entered. (T45:10 to 46:1), although it was not entirely clear if the comparison was to all other purchase agreements in which NPPD is involved, or only those that involve wind or renewable resources.

18. If a problem would arise with the financing, construction, eligibility for the production tax credit, or operation of the proposed facility, Nebraska

ratepayers would not be exposed to any liability for the costs already incurred. NPPD and its ratepayers would only be responsible to pay for the electricity generated by the facility and delivered, at the contractual price. (T44:10-17).

19. NPPD intends to enter into the power purchase agreement with Cottonwood Wind, contingent on the execution of an “off-taker” agreement with one of NPPD’s large industrial customers. The company wanted to purchase fifty megawatts of renewable energy to meet the company’s renewable energy goal. NPPD will purchase the output from the Cottonwood Wind Project and sell the resulting renewable energy credits to the large industrial customer for a term of fifteen years. (T46:10 to 48:3). Both NPPD’s management and legal division have already given approval to sign the power purchase agreement. (T48:11-24). NPPD will sign the power purchase agreement with Cottonwood Wind once NPPD has seventy-five megawatts of load sign up for the renewable energy credit agreement, by the end of 2014. The large industrial customer constitutes fifty megawatts of that total. NPPD’s retail division would take up to twenty megawatts of the total. If additional off-takers do not enter into agreements with NPPD similar to the one with the large industrial customer for the remaining electricity, NPPD will not enter into the power purchase agreement with Cottonwood Wind. (T48:19 to 50:16; T52:3-9).

20. In order to ensure that the off-taker agreements would be entered into prior to construction of the proposed generation facility, Cottonwood Wind indicated it would agree to the Board making its approval of the proposed project

conditioned on the execution of a power purchase agreement with NPPD for the electric output from the facility. (T49:21 to 51:21; T57:3-7; T57:19 to 58:3).

OPPD requested that the approval be contingent on the execution of a power purchase agreement between Cottonwood Wind and a Nebraska electric supplier for the entire output of the proposed facility. (T56:15 to 59:17).

CONCLUSIONS OF LAW

21. Pursuant to Neb. Rev. Stat. §§ 70-1012, 70-1013, and 70-1014, the Board has jurisdiction to conduct a hearing and either approve or deny an application for authority to construct electric generation and related facilities located in the State of Nebraska. Such approval is required prior to commencement of construction of facilities such as those described in application PRB-3777-G.

22. The Board has complied with the requirements under Neb. Rev. Stat. § 37-807(3) to consult with and request the assistance of the Nebraska Game and Parks Commission in order to utilize the Board's authority in furtherance of the purposes of the Nebraska Nongame and Endangered Species Act, and to insure that approval of the proposed electric generation facility and related facilities would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Commission to be critical. Based on Cottonwood Wind's commitments to implement numerous mitigation measures, the Commission has determined that the proposed project "may affect but is not likely to adversely affect" any endangered or threatened species or habitat critical to those species. The Board believes it is reasonable to defer to the expertise of the

Commission. The Board therefore concludes that, due to Cottonwood Wind's agreement to implement the evaluation, protection, and mitigation measures outlined in the Commission's letter dated September 11, 2014, approval of the proposed generation facility and its related facilities would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of the critical habitat of such species.

23. The Board considers the pricing information in Exhibit 12 to be proprietary and commercial information, the public disclosure of which would serve no useful purpose. The Board therefore finds that the pricing information in Exhibit 12 is not a public record and is not subject to public disclosure under the provisions of Neb. Rev. Stat. section 84-712.05(3).

24. The Board finds that the evidence shows the proposed project will serve the public convenience and necessity if NPPD signs a power purchase agreement to take the electric power produced by the proposed facility. The project will provide cost-effective energy to NPPD's ratepayers. NPPD only pays for the electricity actually produced by the facility, so NPPD's ratepayers have no further exposure to risk associated with this facility. NPPD's industrial and other large customers desire to purchase the renewable energy credits created by the output of the proposed facility, creating a need for the resulting power and making the facility even more economical.

25. The Board finds that the evidence demonstrates that Cottonwood Wind can most economically and feasibly supply the electric service resulting from the proposed project.

26. The Board finds that the evidence demonstrates the proposed project will not unnecessarily duplicate other facilities or operations. The nearest wind generation facility is approximately ninety miles from where the Cottonwood Wind facility would be located. The evidence shows that the addition of the Cottonwood Wind facility at an economical price is needed to meet the renewable energy goals of certain of NPPD's large industrial customers, a service that is not currently being met for those customers with NPPD's existing generation portfolio.

27. That based on the foregoing findings, Cottonwood Wind is entitled to an Order approving the construction of the proposed wind turbine electric generation facility described in application PRB-3777-G, with certain conditions.

ORDER

That during that part of its public meeting on September 12, 2014, held subsequent to the hearing on the merits pertaining to application PRB-3777-G, a majority of the members of the Power Review Board, by a vote of 3 to 0, voted in favor of a motion to approve application PRB-3777-G, conditioned on the execution of a power purchase agreement between Cottonwood Wind Project, LLC and the Nebraska Public Power District.

IT IS THEREFORE ORDERED by the Nebraska Power Review Board that, pursuant to the Board's action taken during its public meeting held September 12, 2014, application PRB-3777-G filed by the Cottonwood Wind Project, LLC for authorization to construct an 89.5 megawatt wind turbine electric generation facility and necessary related facilities in Webster County, Nebraska be, and hereby is APPROVED, subject to the

following conditions:

- 1) Before the approval granted in this Order shall become effective, a power purchase agreement for the entire electric output from the proposed facility must be executed by the Cottonwood Wind Project, LLC, and the Nebraska Public Power District within one hundred and twenty days following the issuance of this order. Commencement of construction cannot proceed in the absence of such signed power purchase agreement. Cottonwood Wind Project, LLC, will notify the Power Review Board when a fully executed power purchase agreement with the Nebraska Public Power District has been executed. Such notice must occur prior to commencement of construction on the project. Applicant will inform the Board if the price in the final power purchase agreement is different from the price indicated in the confidential document provided to the Board in Exhibit 12. If the final price is different from that indicated in Exhibit 12, Applicant will inform the Board the amount of variance as a percentage.
- 2) Cottonwood Wind Project, LLC, shall abide by and implement, to the best of its ability, the evaluation and mitigation measures outlined in the Nebraska Game and Parks Commission's consultation letter dated September 11, 2014.

Dated this 24th day of October, 2014.



Stephen M. Lichter, Chairman

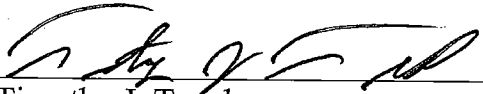
CERTIFICATE OF SERVICE

I, Timothy J. Texel, Executive Director and General Counsel for the Nebraska Power Review Board, hereby certify that a copy of the foregoing **Order** in PRB-3777-G has been served upon the following parties by mailing a copy of the same to the following persons at the addresses listed below, via certified United States mail on this 28th day of October, 2014.

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