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November 19, 2010

Via E-Docket Filing

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square
121 Seventh Place East
St. Paul, MN 55101

RE: ***In the Matter of the Application of Goodhue Wind, LLC for a Site Permit and Certificate of Need for a 78 MW Large Wind Energy Conversion System in Goodhue County***
Docket Nos. IP-6701/WS-08-1233 and CN-09-1186

Dear Dr. Haar:

Pursuant to Minn. Rules part 7829.3000, subp. 5, AWA Goodhue, LLC respectfully requests that the Commission accept the enclosed reply comments.

Thank you for your consideration.

Sincerely,

/s/ *Todd J. Guerrero*

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c: Service List (w/encl.)

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of AWA Goodhue, LLC, for a Certificate of Need and a Site Permit for a 78 MW Wind Project and Associated Facilities in Goodhue County	PUC Docket No.IP-6701/CN-09-1186 PUC Docket No.IP-6701/CN-08-1233

REPLY COMMENTS OF AWA GOODHUE, LLC

INTRODUCTION

Sending this matter to a contested case to answer the question of whether there is good cause in the record for the Commission not to apply Goodhue County's unprecedented 10 rotor diameter setback is an exercise in futility and a waste of time and resources. Developments since October 21 show more clearly than ever why it's a bad idea for the Commission to allow local governmental units to unreasonably interfere with the Commission's state-wide, preemptive authority in siting utility-scale wind farms. The Commission's decision to refer this matter to a contested case was unreasonable, and the Commission has an obligation to reconsider it.

DISCUSSION

I. A CONTESTED CASE WILL RESULT ONLY IN NEEDLESS DELAY AND ADD NOTHING SUBSTANTIVELY NEW TO THE RECORD.

AWA Goodhue is proposing a 78 MW wind project in Goodhue County, a part of the state that has good wind resources and available transmission but so far very little renewable energy development. Almost two years ago (December 4, 2008), pursuant to Minn. Stat. § 216B.1612, subd.2 (f) (3), the Goodhue County Board of Commissioners designated the project as C-BED, an approval on which the project has since relied in part in spending millions of

dollars in development and permitting activities. More than seven months ago, the Commission approved the project's two power purchase agreements as consistent with the public interest. The project now holds a signed interconnection agreement with the Midwest Independent Transmission System Operator, which grants the project permission to connect to the grid at a low cost of entry, particularly in light of today's congestion. This project has now been pending before the Commission for more than one year.

Two weeks prior to a hearing for final approval by this Commission (and just a month before the county election), responding to a small but highly vocal minority, the same county board passed an ordinance, which if enforced by this Commission, effectively prohibits the project's construction. Other than the county's enactment of its ordinance, there is nothing that materially distinguishes this project from any of the thousands of megawatts of wind energy previously approved by this Commission. In fact, this project has voluntarily agreed to standards which are far more protective of landowners' sensibilities than most if not all of the previously-approved state wind projects.

As is evident in their answers, the strategy of project opponents is simply to delay this matter as long as possible, as it is no secret that every day of delay represents a "victory"[1] for opponents. They know too that resources are finite and that ultimately endless delay will doom this project, as it would any project. Unless the Commission reconsiders its decision, the Commission will have allowed, whether intended or not, exactly what Commissioner Pugh warned against on October 21: that the project fails simply because of delay. That is, unless this Commission acts decisively by exercising its preemptive authority, without interference by local governmental units whose interest are primarily local, this project is destined to the ash pile not because it lacks merit, is different or inferior to the thousands of megawatts of wind projects

[1] *Red Wing Republican Eagle*, October 21, 2010, quoting Goodhue Wind Truth member Steve Groth.

previously approved by this Commission (and which similar projects are currently pending and will come again before the Commission), or because it failed to work in good faith with local officials and landowners, or for any otherwise legitimate reason. Instead, unless the Commission acts affirmatively, this project, along with its jobs, investment, income, and contribution to a clean energy future will expire because of one reason only: reticence in deciding and the resulting unreasonable delay.

Already, project opponents have proposed to the Office of Administrative Hearings schedules and a scope of issues that could easily – indeed, which are designed to – further this matter another, minimum, six or seven months.[2] In its answer, for instance, the county urges more delay and that the Commission follow the county's enlightened approach to wind development by abdicating application of the Commission's "good common sense" as "not germane" to the Commission's evaluation of the county's across-the-board 10 RD standard.

AWA Goodhue urges that the Commission not don the blinders project opponents offer it. After more than a year at this, the record contains literally thousands of pages of documents and testimony which address the topic of whether a 10 RD setback is necessary to protect health and welfare, and whether it is reasonable for the Commission to apply such a standard to this project. A contested case process in which project opponents will simply retread the same "facts" and arguments already in the record, in spades, adds nothing meaningful to the inquiry.

Everybody knows that delay works against this project, and a contested case certainly delays. Here, however, contrary to opponents' assertions, Minnesota Statutes § 216BF.081 requires that the Commission apply its common sense in determining, on the basis of the already

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[2] *See, e.g.*, Motion to Intervene and Proposed Hearing Schedule of Goodhue Truth, in which it proposes the contested case examine, among other things, setbacks, health impacts, stray voltage, shadow flicker, magnetic fields, landowner rights, project economics, the project's organizational structure, and impacts on public infrastructure, and which puts a Commission decision in this matter well into June 2011.

extensive record, whether the 10 RD setback is reasonable for this project, and by implication, whether such a standard is reasonable for any other future, similarly-situated (which is to say, just about every future) commercial wind project in the state. The Commission can and should determine whether good cause exists not to apply the county's standards, without first deferring this matter to a protracted and expensive contested case. For the reasons expressed above and in its November 4, 2010 request for reconsideration, AWA Goodhue respectfully asks that the Commission do that.

II. THE COUNTY'S DESIRE TO EXERCISE "LOCAL CONTROL" OVER THE PROJECT IS THE OPPOSITE OF WHAT THE LEGISLATURE INTENDED WHEN IT GAVE THE COMMISSION PREEMPTIVE AUTHORITY OVER COMMERCIAL WIND PROJECTS.

Immediately following the October 21 hearing, the project sponsors set out to do immediately what the Commission hinted at during its deliberations: work something out with the county. Over the last few weeks, the project has spent considerable time and effort in developing proposals or compromise positions that would satisfy the county, and all but the most ardent opponents. One of the compromise positions that the project brought forward (but in no way had agreed with)[3] was (1) reducing the project to 34 turbines (a reduction of approximately 25.6 MW, and, of course, corresponding revenue), (2) a 1/3rd mile setback and/or agreeing to comply with the World Health Organization or similar nighttime noise average. A compromise on the project's part, of course, would also require compromise on the county's part. In light of the county's now existing ordinance that mandates a one-half mile (10 RD) setback for projects greater than five megawatts, i.e., for LWECS (though of course the ordinance doesn't even purport to have jurisdiction over LWECS), compromise on the county's part would require the

[3] Before AWA Goodhue could agree to any compromise, even if the county was interested, it would have to be consistent with AWA's obligations under its PPAs and interconnection agreement.

county to waive application of its setbacks as against this project, or some other appropriate relief.

On November 16, project owners attended the county public meeting with the intent to discuss these and possibly other options. At the county board hearing, however, with a handful of project opponents in attendance, the county board refused to take any action that would suggest a compromise of any sort is in the cards. In fact, Commissioner Allen stated in no uncertain terms that there should be no change to the ordinance, as the "ink is barely dry."

Subsequent comments from individual commissioners further demonstrate why the county is unlikely to agree to any compromise. In their November 15 letter filed with the Commission, Commissioners Rechtzigel and Bryant refer to the compromise offered by AWA Goodhue, but then state that "[m]ost importantly, if negotiations break down, the default setback remains at 10 [RD]." Left unsaid is that the "default setback" of 10 RD is a non-starter, as there is no way the project can comply with such a standard in the first instance. Moreover, given the extraordinary pressure that individual commissioners have been under from project opponents, the reality is that it would be political suicide for the county board to do anything that would allow *any part* of this project to go forward. Having first approved this project as C-BED, the county board's Jeckyl and Hyde behavior, apparently triggered by the stress of doing what is right versus what is political, has been prejudicial in the extreme and frankly, inexcusable.

It is, of course, not surprising that elected local governmental officials respond to pressure from an extremely active and coordinated group of citizens who have strenuously objected to progress that, in their own words, threatens their bucolic way of life, not to be intruded upon by the needs of those outside its imaginary borders. This does not mean, however, that the Commission should follow suit. The Commission's failure to approve a wind project that its staff has concluded, without difficulty, has met its statutory burdens solely on the basis

that the project is unable to satisfy a local governmental unit's politically-charged, and otherwise unreasonable standard portends a dangerous trend for renewable energy in Minnesota. And given the Minnesota Commission's historical leadership on energy issues, an ominous sign for wind throughout the country.

Commissioners Rechtzigel and Bryant, echoing statements made by commissioners Allen and Siefert at the October 21 hearing, appear to believe that only "[*l*]*ocal control* of the development of large wind farms [can] best address the needs and concerns *of residents of Goodhue County*." November 15 letter, emphasis added. That may or may not be the case. But this Commission's obligations reach far beyond the residents of Goodhue County. This Commission, unlike the county board, is charged with balancing the "needs and concerns" of all the residents of Minnesota, including the citizenry's overwhelming preference for greater penetration of renewable energy, at reasonable costs. Goodhue County is not entitled, by its land use patterns or the volume of a small subset of its citizens' objections, to excuse itself from the contributions that all Minnesotans must make, collectively, to achieve shared goals. That is precisely why the legislature, under the heading of "Preemption," gave this Commission the *sole and exclusive* authority to site LWECS in Minnesota, which authority "supercedes and preempts all zoning, building, rules, regulations, or ordinances adopted by regional, *county*, local and special purpose governments." Minn. Stat. § 216F.07 (emphasis added).

By choosing not to exercise its preemptive authority that a county 10 RD is plainly inconsistent with Minnesota's commitment to clean, renewable energy, but instead defer to the political whim of an individual county, the Commission has departed from its past practice and opened Pandora's box. The path now laid out appears clearly at odds with legislative intent and the overwhelming preference of Minnesota's non-Goodhue County residents. Unless this Commission acts affirmatively to reconsider its decision, the Commission will have provided

project opponents with a blue print on how to railroad otherwise perfectly lawful renewable energy projects, under the guise that local governments should share equally in a responsibility over projects for which the state's interest is paramount, and which responsibility the Commission alone is supposed to possess. Instead of having a Commission-issued site permit be the "only site approval" required for LWECS, wind developers will now be expected to "negotiate agreement" with respect to "noise limits, shadow flicker limits, distance setbacks, and tax payments to the county and townships," etc., no matter how unreasonable the local standards or requirements may be. Such a scheme turns the concept of preemption on its head and represents a disaster in the making for renewable energy.

CONCLUSION

Pandora's Box has been opened. Reconsideration is an opportunity to put the cover back on the box. The existing record supports issuance of the site permit and certificate of need as recommended by the Office of Energy Security and Commission staff. Referral of this matter to the Office of Administrative Hearings for a recommendation of whether good cause exists for this Commission to not apply Goodhue County's plainly unreasonable wind standards is a waste of administrative resources and money, and an unnecessary abdication of the Commission's responsibility.

Dated: November 19, 2010

Respectfully submitted,

/s/ Todd J. Guerrero

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