

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application of AWA
Goodhue Wind, LLC for a Large Wind
Energy Conversion System Site Permit for the
78 MW Goodhue Wind Project in Goodhue
County

ISSUE DATE: November 2, 2010

DOCKET NO. IP-6701/WS-08-1233

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On October 19, 2009, AWA Goodhue Wind, LLC (Goodhue Wind or the Applicant) filed a revised site permit application.

On November 30, 2009, the Commission Order accepted Goodhue Wind's site permit application for the Goodhue Wind Project.

On December 4, 2009, the Office of Energy Security (the OES) issued a notice of site permit application acceptance and the Applicant distributed the site permit application and notice of application acceptance to local, state and federal governmental agencies and to landowners.

On February 12, 2010, Goodhue Wind Truth filed a request for a contested case hearing in this matter.

On May 3, 2010, the Commission issued its ORDER APPROVING DISTRIBUTION OF THE DRAFT SITE PERMIT AND DENYING CONTESTED CASE. The Commission made a preliminary determination that a Draft Site Permit may be issued for the Goodhue Wind Project and on May 6, 2010 issued the Draft Site Permit for public comment. The Commission found that Goodhue Wind Truth had not identified contested issues of fact material to resolution of Goodhue Wind's application for a site permit. The Commission concluded that a contested case hearing was not needed to provide a record adequate for the Commission to make a final determination on Goodhue Wind's application for a site permit. However, finding that additional opportunities for public input would be useful, the Commission expanded the scope of the public hearing in the certificate of need proceeding for this project (Docket No. IP-6701/CN-09-1186) to include, to the extent feasible, siting and permitting issues.

On July 21, 2010, and July 22, 2010, a public hearing presided over by Administrative Law Judge (ALJ) Eric L. Lipman was held at the Goodhue High School in Goodhue, Minnesota, to receive public testimony on need and siting matters. Approximately 200 persons attended the public hearings, which included one afternoon and one evening session each day, and 56 persons provided oral testimony. Public comments and exhibits were recorded and entered into the record, with additional written comments allowed to be submitted on or before August 6, 2010.

On September 7, 2010, the ALJ submitted his Summary of Public Testimony.

On October 13, 2010, the Goodhue County Board of Commissioners filed a copy of an amendment to the Goodhue County Zoning Ordinance (Article 18 Wind Energy Conversion System Regulations) adopted by the County Board October 5, 2010. On the same day, the OES filed its comments and recommendations.

On October 18, 2010, the Goodhue Wind Truth filed comments requesting that the Commission take into consideration Goodhue County's Ordinance, standards and intent regarding siting of wind generators when considering siting permits within Goodhue County.

On October 20, 2010, the OES filed Supplemental Comments focusing on two sections in the Goodhue County Wind Ordinance: Section 6, Stray Voltage Testing for Commercial WECS Projects, and Section 4, Neighboring Dwellings. The OES stated that the stray voltage requirement was not relevant to this docket and should not be included in the proposed site permit. As to the Ordinance's set-back requirement of Section 4, the OES noted that to date the Commission has not authorized a 10 Rotor Diameter (10 RD) setback in a site permit for non-participating landowners and that such a requirement was not reasonable in this instance.

The Commission met on October 21, 2010 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over requests for site permits for Large Wind Energy Conversion Systems (LWECS) under Minn. Stat. §§ 216F.03 and 216F.04.

The Commission finds that it cannot satisfactorily resolve, on the basis of the record before it, all questions regarding the applicability of an ordinance adopted by the Goodhue County Board of Commissioners on October 5, 2010, including whether there is good cause for the Commission not to apply any standards adopted by the Goodhue County Board that are more stringent than the standards currently applied to LSWECS by the Commission. The Commission will therefore refer the matter to the Office of Administrative Hearings for a contested case proceeding to develop the record and to receive the ALJ's recommendations on the issues identified below in Section III of this Notice and Order.

II. Background

On October 5, 2010, the Goodhue County Board of Commissioners adopted amendments to the Goodhue County Zoning Ordinance, specifically Article 18 Wind Energy Conversion System

Regulations. Among other things, Article 18 includes a 10 Rotor Diameter (10 RD) setback requirement for non-participating landowners (Section 4) and requirements aimed at minimizing any harm due to stray voltage (Section 6). Article 18 states an intention to regulate the installation and operation of Wind Energy Conversion Systems (WECS) within Goodhue County that have a total nameplate capacity of 5 Megawatts or less (Small Wind Energy Conversion Systems – SWECS) and that are not otherwise subject to siting and oversight by the State of Minnesota pursuant to Minnesota Statutes, Chapter 216F.

With respect to Large Wind Energy Conversion Systems (LWECS) such as the system proposed by the Applicant Goodhue Wind in this matter, the ordinance states:

For LWECS, the county does not assume regulatory responsibility or permit authority under MS 216F.08, but any standards more stringent than those of the MPUC are to be considered and applied to LWECS per MS 216F.081.

Based on this section and confirmed by representatives of the Goodhue County Board at the Commission’s October 21, 2010 meeting, the Commission finds that the Goodhue County Commissioners intended the Commission to be required “per MS 216F.081” to consider “any standards more stringent than those of the MPUC” when considering the application of Goodhue Wind (and any other proposer of an LWECS project in Goodhue County) for a site permit.

Minn. Stat. § 216F.081 states:

A county may adopt by ordinance standards for LWECS that are more stringent than standards in commission rules or in the commission's permit standards. The commission, in considering a permit application for LWECS in a county that has adopted more stringent standards, shall consider and apply those more stringent standards, unless the commission finds good cause not to apply the standards.

The Commission finds that certain provisions of Goodhue County Zoning Ordinance, Sections 4 and 6 of Article 18 Wind Energy Conversion System Regulations, adopt “more stringent standards” than the Commission has adopted heretofore with respect to the LWECS it regulates. As a consequence, the Commission is required, pursuant to Minn. Stat. § 216F.081 to “consider and apply those standards, unless it finds “good cause” not to apply those standards.

The Applicant has strenuously objected to the imposition of these more stringent standards on its project, but the record to date does not establish “good cause” for the Commission not to apply them.

III. Issues to be Addressed

Accordingly, the Commission will refer this matter to the Office of Administrative Hearings for contested case development of the record, with a request that the record be developed pursuant to the following concerns:

1. The ALJ assigned to this matter is requested to develop a record on every standard in Article 18 that is more stringent than what the Commission has heretofore applied to LWECS and make recommendations regarding each such standard whether the Commission should adopt it for Large Wind Energy Conversion Systems in Goodhue County. The Commission has identified two such standards in this Order (Section 4 and Section 6) but is not by this Order restricting the ALJ from developing the record and making recommendations regarding additional standards in Article 18 that upon further examination meet the “more stringent” qualification.
2. The ALJ assigned to this matter is requested to allow the parties to develop a factual record on the question of “good cause” as that term appears in Minn. Stat. § 216F.081 and to provide recommendations on whether, with respect to each standard in Article 18 identified in the course of her review as “more stringent” than what the Commission has heretofore applied to LWECS, there is “good cause” for the Commission to not apply the standard to siting LWECS in Goodhue County.
3. As the ALJ addresses the issues identified in the previous two sections, the ALJ is requested to include (but not limited to, by this Order) whether there is sufficient evidence regarding health and safety to support a 10 rotor diameter set-back for non-participating residents and the stray voltage requirements.

IV. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Kathleen D. Sheehy. Her address and telephone number are as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101 and (651) 361-7848. Her mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

B. Hearing Procedure

• Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

• Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

• Discovery and Informal Disposition

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Tricia L. DeBleekere, Energy Facility Planner, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2254; or Anna L. Jenks, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 757-1262.

• Protecting Not-Public Data

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

• Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

• Scheduling Issues

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

• Notice of Appearance

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

• Sanctions for Non-compliance

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Applicant Goodhue Wind and the Office of Energy Security of the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held Friday, November 19, 2010 at 1:30PM in the Large Hearing Room at the offices of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

The circumstances of this case persuade the Commission that it would be appropriate to afford the parties, and most pertinently the Applicant, an opportunity to develop the record in this matter to provide the Commission a complete record on which to base its decision on this issue. The Applicant has invested much time and expense in this project, which it has argued would create large benefits and which, it further argues, meets all standards in effect as of the date of its application. In addition, the Goodhue County Ordinance in question, while having followed an extensive deliberative process and was reportedly based on an extensive record¹, was adopted only recently, October 5, 2010.

Accordingly, the ALJ is requested to use deliberate speed in conducting this proceeding, consistent with the Commission's primary goal of receiving a thorough record on these issues and the ALJ's considered recommendations. The parties may wish to comment at the Preliminary Hearing how this request by the Commission is best reflected in the scheduling of this matter.

V. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to contested cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to

¹ For a summary of the lengthy process followed in Goodhue County leading up to adoption of the ordinance in question on October 5, 2010, see a memo from Goodhue County Land User Management to the Goodhue County Commissioners dated September 29, 2010. The memo became part of the record in this matter as an attachment to the OES's Supplemental Comments filed October 20, 2010. The Commission notes that an extensive Goodhue County record referred to by several speakers at the Commission's October 21, 2010 meeting, including representatives of the Goodhue County Board of Commissioners, was not yet part of the Commission's record in this matter as of the Commission's October 21, 2010 hearing date.

refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VI. *Ex Parte* Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. This matter is referred to Office of Administrative Hearings for contested case proceedings consistent with this Order.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



This document can be made available in alternative formats (i.e., large print or audio) by calling 651.296.0406 (voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1.800.627.3529 or by dialing 711.

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert St.

P.O. Box 64620

St. Paul, MN 55164-0620

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350

St. Paul, Minnesota 55101-2147

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78 MW Goodhue Wind Project in Goodhue
County

MPUC Docket No. IP-6701/WS-08-1233

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Kathleen D. Sheehy, Office of Administrative Hearings, Suite, 1700, 600 North Robert St.,
P.O. Box 64620, St. Paul, MN 55164-0620; (651) 361-7848.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____