

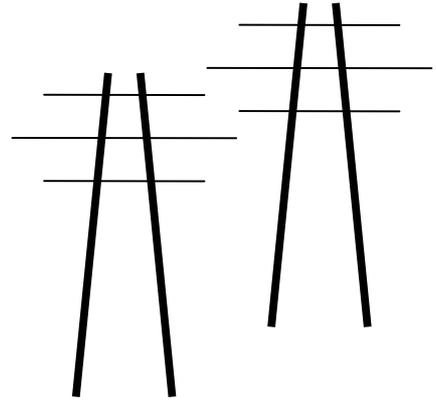
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November 15, 2010

Burl Haar, Executive Secretary
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

via email and eFiling

RE: Reply to Applicant's Motion for Reconsideration
In the Matter of the Application of AWA Goodhue, LLC for a Large
Wind Energy Conversion System (LWECS) Site Permit for the 78 MW
Goodhue Wind Project in Goodhue County.
PUC Dockets WS-08-1233 and CN-09-1186

Dear Dr. Haar -

Enclosed please find Goodhue Wind Truth's Response to Applicant AWA Goodhue's Motion for Reconsideration in the above-entitled matter.

Please let me know if you require anything further.

Very truly yours,

Handwritten signature of Carol A. Overland

Carol A. Overland
Attorney for Goodhue Wind Truth

cc: eFiled & eServed

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

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

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

In the Matter of the Application of AWA Goodhue Wind,
for a Certificate of Need for a 78 MW Wind Project
(Goodhue Wind Project) in Goodhue County, Minnesota

Dockets: IP-6701/WS-08-1233
IP-6701/CN-09-1186

GOODHUE WIND TRUTH

RESPONSE TO APPLICANT'S MOTION FOR RECONSIDERATION

Goodhue Wind Truth has filed a Petition to Intervene, there have been no objections, and we anticipate being granted full party status at the Prehearing Conference on November 19, 2010; prior to the November 23, 2010 Commission meeting. Goodhue Wind Truth has actively participated in the Siting docket (WS-08-1233), Certificate of Need docket (CN-09-1186) and Power Purchase Agreement dockets (M-09-1349 and M-09-1350). Based on our significant participation thus far and anticipation of party status, we submit the following brief comments on the Applicant's Motion for Reconsideration.

Goodhue Wind Truth concurs with the decision to remand. This is yet another scenario where a third party with material and likely determinative information takes action shortly before a Commission decision, and where the Commission has not received adequate information upon which to base a decision. Goodhue Wind Truth would prefer a decision right now, on the record, as the Commission would necessarily adopt and apply the Goodhue County Wind Ordinance. However, the Commission instead remanded this to the Administrative Law Judge, and Goodhue Wind Truth supports this decision.

**I. THE RECORD IS INSUFFICIENT TO SUPPORT A DECISION
REGARDING GOOD CAUSE**

The record in this case is insufficient to support a decision of the Commission – if the Commission is wanting to find “good cause.” As noted by Commissioners Wergin and Pugh in the deliberation, if a decision was to be made at this time, the Commission would apply the Goodhue County Wind Ordinance. Application of the Goodhue County Wind Ordinance is, of course, Goodhue Wind Truth’s preference. But absent this decision, Goodhue Wind Truth supports the Commission’s referral to OAH to develop the record.

II. A CONTESTED CASE HAS APPROPRIATELY BEEN ORDERED

The Commission has ordered a Contested Case

Minnesota’s wind siting rules have clear guidelines for contested-case:

Contested case hearing.

A. Any person may request in writing that a contested case hearing be held on an application for a site permit for a proposed LWECS project. The contested case hearing request must be filed within the time period established for submitting comments on the draft site permit. The person requesting the public hearing shall include, as part of the request, the issues to be addressed in the hearing and the reasons a hearing is required to resolve those issues.

B. The commission shall order a contested case hearing if the commission finds that the person requesting the contested case hearing has raised a material issue of fact and that holding a hearing would aid the PUC in making a final determination on the permit application.

C. The hearing must be conducted according to the rules of the Office of Administrative Hearings.

D. For a contested case hearing, the commission shall identify the issues to be resolved and limit the scope and conduct of the hearing according to applicable law, due process, and fundamental fairness. Alternatively, the commission may request the administrative law judge to identify the issues and determine the appropriate scope and conduct of the hearing according to applicable law, due process, and fundamental fairness.

Minn. R. 7854.0900, Subp. 5.

It is the Commission that determines whether a contested case is necessary. The Commission has ordered a contested case and specifically and narrowly identified the issues and the scope of the hearing. If the Commission Orders a contested case, that is within its prevue. Goodhue Wind Truth supports the Commission's decision.

III. THERE IS A SYSTEMIC FLAW IN THE PROCESS BY WHICH MATERIAL INFORMATION IS NOT FORWARDED TO THE COMMISSION

What is clear from this process is that this is yet another case where a third party is engaged in a separate ongoing iterative process related to the docket before the Commission, a process of which MOES staff is well aware and participating, and where MOES staff does not adequately inform the record thus far developed, and ultimately in its "Comments and Recommendations," does not adequately inform the Commission of the ongoing iterative process. Then, when that third party comes to a decision point in the iterative process, after the record has closed, and just before the Commission's decision, because the Commission has not be adequately apprised of ongoing developments, is surprised at the last-minute by insufficient information, and refers the docket to the Administrative Law Judge to build the record.

The problem is that the last-minute action by the related third party is something that should have been anticipated and expected, neither regarded or conveyed as an unknown bolt out of the blue. MOES has not adequately prepared and informed the Commission, again. This is a systemic flaw that the Commission should address.

In this case, MOES knew that Goodhue County was in the process of revising its ordinance, staff had discussions with various county representatives, and MOES' Deb Pile appeared at a Subcommittee meeting last summer. MOES' Supplemental Comments and Recommendations states that:

OES EFP staff is not able to provide any additional information about what may have transpired in Goodhue County regarding development of regulations and would refer the Commission to the appropriate representative of Goodhue County for additional information.

MOES' Supplemental Comments and Recommendations, p. 2.

This declaration is patently absurd. MOES has been fully aware of the ongoing process of revision of the Goodhue County Ordinance, MOES has full knowledge of the evolving draft ordinance language, MOES had ongoing discussions with County staff and members of the public regarding the revision of the Ordinance, draft Ordinance language was entered into the record by members of Goodhue Wind Truth, MOES referred to County zoning policy, a memo to Goodhue County staff and cited issues raised by the Goodhue County Planning Advisory Committee in initial "Comments and Recommendations"¹ dated October 13, 2010, refers to Local Planning and Zoning² in the Draft Permit, and knew or should have known that a final ordinance was imminent. The Ordinance was finally passed by the full Goodhue County Board at its publicly announced meeting, shortly before the PUC Agenda meeting. Passage of the ordinance was published in several papers. This was no surprise. It was no surprise to the representatives of the Applicants, MOES and Goodhue Wind Truth, who were present and participated in various means throughout the County process. Yet after the Goodhue County Ordinance passed, the Supplemental Comments and Recommendations inexplicably state that "OES EFP staff is not able to provide any additional information about what may have transpired in Goodhue County regarding development of regulations?" MOES had much information but it had not forwarded the information, its analysis, or any recommendation to the Commission.

This is the second time in recent history that this has happened, with the same result: a remand to the ALJ. The other recent example is the CapX 2020 Brookings docket, where the

¹ Recommendations pps. 7, 9, 21, 22,

² Draft Permit, p. 10-11.

DOT and US Fish and Wildlife had repeatedly submitted comments relevant to and determinative of a siting/routing issue, MOES knew of the information yet did not bring it forward in the evidentiary hearing on routing, and then late in the hearing, the impact of the DOT comments submitted to MOES and the facts of prohibitive scenic easements became public knowledge, the iterative comments of USFWS became public knowledge, and again, just before the agenda meeting on the Brookings case, USFWS submitted another comment, and the Commission was taken unawares due to selective offering of relevant and determinative information. As with this AWA Goodhue case, that case also was remanded back to the ALJ.

As a preventative measure, the Commission should specify that the full range of information be presented, particularly that of related third parties not intervening but whose acts or positions could have a material impact on dockets at issue.

III. CONCLUSION

Goodhue Wind Truth requests that the Commission refrain from Reconsideration, and asks that the Commission stand by its decision to remand for further development of the record.



Dated: November 15, 2010

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