

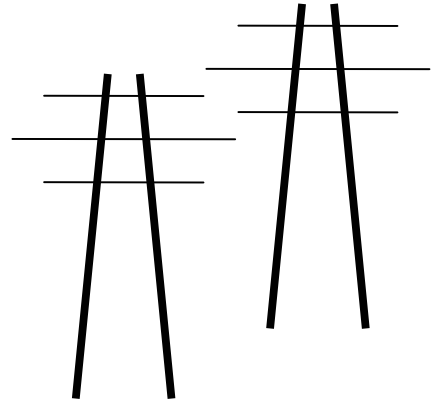
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April 14, 2010

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

via email only: burl.haar@state.mn.us

**Re: AWA Goodhue Wind – Certificate of Need Docket and PPA Dockets
PUC Docket 09-1186; 09-1349 and 09-1350**

Dear Dr. Haar, Commissioners, and all parties:

In response to MOES Comments and Recommendations of March 29, 2010 in the above-captioned docket, and in response to Staff Briefing Papers for the April 15, 2010 Commission meeting (Mitchell and DeBleekere), I am sending these Comments on behalf of Goodhue Wind Truth, an active participant in these proceedings, which has requested a contested case and intervenor status.

There are four dockets at issue, all scheduled before the Commission on April 15, 2010. Because there are material issues of fact about which the record needs to be developed prior to a Commission decision, Goodhue Wind Truth requests a joint Contested case hearing in the dockets for which the Commission deems appropriate.

The Power Purchase Agreement dockets (09-1349 and 09-1350) present essentially the same primary issue as in the Excelsior Energy PPA docket (05-1993), that of whether the proposed PPAs are a reasonable option by which Xcel can meet its energy requirements, in this case, mandated renewable energy.

Fact Issues and Legal Issues

Without question there are legal issues to be addressed by the Commission, but they turn on material facts, many of which are necessary to a decision but not yet in the record. Xcel frames

this as only a matter of interpretation of the C-BED statute, but without the material facts regarding the Applicant organization and the distribution of gross income, that legal determination may not be made. MOES raises the legal and policy issues surrounding Commission determinations of whether the project PPAs are “cost effective,” “reasonable” and how “minimal impacts” is defined. As MOES frames it, “the fundamental policy question before the Commission is how much more expensive a C-BED project can be and still be considered to have a “minimal impact.” The results of the necessary but absent “cost checks” are material issues fact. Commission staff takes a more hands off approach regarding C-BED status

Material Issue of Fact – C-BED Status

As to Material facts at issue, the primary material fact at issue is that of C-BED status, raised as a fact issue by both Goodhue Wind Truth and Commerce - Office of Energy Security. The organizational structure of the Applicant is at issue, and that organizational structure is now much different from that originally proposed at the time of initial filing, and about which there remains legitimate questions.

Whether the project as proposed is indeed a C-BED project is at issue, and demonstration of that status is both a fact and legal issue before the Commission, with many necessary facts not yet in the record. The primary facts at issue is the composition of the owners, which has been changing over time through this proceeding. Minn. Stat. §216B.1612, Subd. 2(c). Then, based upon that disclosure, the legal question of whether it meets the test of percentage of qualifying ownership and distribution of gross proceeds found in Minn. Stat. §216B.1612, Subd. 2(g)(1) and (2). If Minn. Stat. §216B.1612, Subd. 2(g)(3) is relied on by any party as demonstration or legitimacy of C-BED status, then another material fact at issue is the demonstration provided to Goodhue County by the Applicant regarding the project’s C-BED status, which was none, and the analysis of the County of the project’s C-BED status, which was none – there was no independent verification or analysis by the County and it is admittedly not equipped to make a C-BED status determination. That is the responsibility of the Minnesota Dept. of Commerce. Goodhue County’s resolution was only a statement of support, and no more.

Staff states that “Although in all previous C-BED projects the OES has issued a letter confirming that the project qualifies as a C-BED project, it said it has not and will not issue such a letter in this case, preferring that the Commission make this decision.

MOES notes that “... the OES did not analyze the previous C-BED dockets as non-C-BED projects since there were no comments from the public challenging whether the project was C-BED... “ and “as a result, the alternatives analysis and the questions about the non-COBED options were not present in previous C-BED proceedings due to differing circumstances in those dockets.”

This failure of any state agency to independently verify these prior claims of C-BED status, admitted in this docket, is demonstration of the necessity of inquiry, and necessity of entry of these material facts into the record to substantiate C-BED claims. Why was C-BED status not questioned in any other proceeding? What was the basis for the prior OES letters “confirming that the project qualifies as a C-BED project?”

Material Issue of Fact – Cost – both Certificate of Need and PPA Dockets

MOES raises cost issues, drawing a distinction between “cost-effective” and “reasonable” and the material facts not yet in evidence regarding comparative costs. While not an issue raised by GWT, except regarding transmission cost, this is another example of material facts necessary in this record. MOES has recommended a 60 day window for Xcel to provide the information -- material facts are missing, and must be obtained prior to any Commission decision. MOES is also recommending an all source renewable bidding process, which would render the PPAs before the Commission moot, at least temporarily, but perhaps permanently. MOES does offer another out, for the Applicants to refile in a manner where comparison of costs is not necessary.

Regarding cost, MOES is recommending a 60 day window for Xcel to provide plan for compliance with the Commission’s Target Order and commitments regarding that Order. That logically would have to be completed prior to acceptance of any PPAs.

In addition, transmission interconnection cost is a material issue of fact. Regarding costs of transmission, while the Goodhue and Vasa substations were revealed in the DRG study as potential interconnection points, this claim has not been verified through completion of MISO interconnection studies regarding these projects, which are pending. See MISO queue H061 and H062. The DRG Study contains this caveat:

IMPORTANT NOTE: This study is a representative analysis. Parties interested in pursuing any of these potential opportunities must work with their transmission provider, as these results do not constitute a full interconnection study. This will require individual potential generation projects to apply for interconnection and to complete required interconnection studies to determine specific transmission impacts and receive approval to interconnect.

The Transition Feasibility Analysis Results from September 30, 2009, report these constraints:

H061	39 MW	DPP			
Limiting Constraint	Contingency	DF	Rating	PU Overload	FCITC
34020 HAZL S 5 161 34135 DUNDEE 5 161 1	34018 HAZLTON3 345 34093 ARNOLD 3 345 1	0.06	167.00	4.50	-9761.43

H062	39 MW	DPP			
Limiting Constraint	Contingency	DF	Rating	PU Overload	FCITC
34020 HAZL S 5 161 34135 DUNDEE 5 161 1	34018 HAZLTON3 345 34093 ARNOLD 3 345 1	0.06	167.00	4.51	-9728.50

MISO queue numbers H061 and H062 were put in queue on June 16, 2008, but are not listed in the March, July or November, 2009 lists of projects moving forward to the Definitive Planning

Phase (DPP) after having met milestones. Nor are the Goodhue Wind queue numbers on this years only list thus far, released April 12, 2010.

As of April 12, 2010, I can't find any documentation that the MISO studies have been completed, that the DRG Study results have been verified, or estimates of the costs of interconnection at the Vasa and Goodhue substations.

MOES has recommended that additional time be provided for a response by Applicants to the Zumbrota Township Ordinance.

Environmental Review

MOES states that the Environmental Report in the Certificate of Need docket will not be available until June 2010. Because there is no analysis of the environmental impacts as required by the rules, and because the Environmental Report is not yet available, issuance of a Certificate of Need is premature. .

Contested Case

Goodhue Wind Truth has requested a Contested Case and submitted its Intervention Petition, making the request in all dockets simultaneously, as each Goodhue Wind docket affects the others, and the request was to preserve our right to request a Contested Case and not have that right precluded by action in other dockets. Goodhue Wind Truth will gladly submit another request for a Contested Case at the appropriate time as provided by the rules, should a Draft Permit be issued and a Comment period opened.

The rule states that 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.

Minn. R. 7854.0900, Subp. 5B (emphasis added). Goodhue Wind Truth has raised material issues of fact in each of these dockets, and the record, at this point, is not sufficient support a decision.

Goodhue Wind Truth agrees with MOES suggestion of incorporation of the Siting Contested Case with the Certificate of Need Public Hearing (MOES Recommendation, p. 10), if that were all held as a Contested Case.

MOES offers the rationalization that because the issues raised are not unique, there is no reason for a contested case. However, the standard for a contested case is whether there are material issues of fact, not whether the issues are unique. Likely the other cases should have had Contested Cases as well.

MOES statement that “it has always been an objective of the program to be pro-active in resolving emerging issues when identified,” is contrary to the evidence within the uprising of landowners with concerns unaddressed, and with the PUC’s own opening of the “Public Health Impacts of Wind Turbines” docket 09-845. If the health, safety and land-use issues raised in this and other siting dockets had been adequately addressed in siting permits and conditions, there would be no landowner uprising.

Goodhue Wind Truth again requests a Contested Case in this and the other dockets.

Timing of Certificate of Need and PPA Dockets with Siting Permit

Minnesota Rule 7854.0500 states that a site permit shall not be issued before a Certificate of Need. The timing of the Certificate of Need docket and/or the Power Purchase Agreement dockets needs to be coordinated with that of the siting docket. For this reason, the delays recommended by MOES will have an impact on the Siting Docket.

Goodhue Wind Truth requests a joint Contested Case for all Goodhue Wind dockets

For all the reasons above, and as advocated in the other dockets, Goodhue Wind Truth requests a joint Contested Case of all of the material issues raised in the many dockets by GWT and MOES.

Thank you for your consideration.



Attorney for Goodhue Wind Truth

cc: Service List