

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
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

**MEMORANDUM OF GOODHUE COUNTY IN OPPOSITION TO
PETITION FOR REHEARING AND RECONSIDERATION
OF OCTOBER 21, 2010, DECISION**

AWA Goodhue, LLC, has petitioned for rehearing and reconsideration of the PUC's October 21, 2010, decision to refer their permit requests to an ALJ for a Fact Finding Proceeding. Minnesota Statute 216B.27 governs the availability of reconsideration and rehearing making it clear that such a remedy is clearly reserved for an extreme situation. The original determination or order may only be over ruled if the Commission finds, pursuant to M.S. 216B.27, Subd. 3, that "it shall appear that the original decision, order, or determination is in any respect **unlawful or unreasonable**..." (emphasis added).

The petition submitted by AWA Goodhue provides a series of conclusory arguments restating the company's previous arguments about why the PUC should find "good cause" to not apply a scaled-up version of Goodhue County's wind ordinance setback requirements to this project. Finding no convincing legal standard of "good cause" to present, the proponents suggest that "good common sense" prevail. This argument is not germane to the issue before the PUC on this request for reconsideration.

First and foremost, a request for reconsideration triggers the much more specific and higher standard pursuant to M.S. 216B.27, Subd. 3. The applicant suggests no facts which would support a finding that the October 21, 2010, decision was "unlawful", rather applicant acknowledges that time limits for decision herein have been extended for "good cause" as

provided in applicable rules. Furthermore, the applicant advances no facts to demonstrate that the original decision was “unreasonable”. Applicant offers no detailed analysis of siting options available on land already under easement and exempt from the non-participant 10 RD setback requirement. The Goodhue County ordinance reduces the minimum setback to 750 feet for participating properties. It is not unreasonable to require a fact finding procedure to explore possible alternatives under the Goodhue County setback requirement.

It is also not unreasonable to find that a fact finding hearing is now necessary when none was previously justified by the state of the record on February 12, 2010. The facts developed in the months of examination and days of hearings conducted in the process of drafting the Goodhue County Wind Ordinance coupled with the very existence of that ordinance are sufficient to establish a need for a formal fact finding. Certainly, such an order is not so “unreasonable” as to justify reconsideration of the PUC’s previous decision.

Conclusion

The applicant has the statutory burden under M.S. 216B.27, Subd. 3, to establish a legal basis for the PUC to grant the request for reconsideration. The record before the Commission has not changed and all arguments presented in applicant’s petition were previously before the PUC when the original decision was made. I respectfully request that the PUC find that its previous decision was not “unlawful or unreasonable” and deny the request for reconsideration and rehearing.

Dated this 15th day of November, 2010.

Respectfully submitted,

GOODHUE COUNTY ATTORNEY’S OFFICE



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