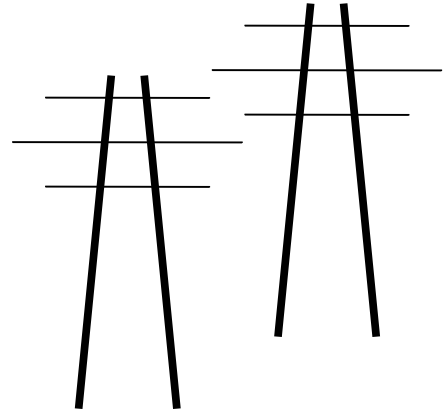


Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

P. O. Box 176
Red Wing, Minnesota 55066
612.227.8638

P.O. Box 69
Port Penn, Delaware 19731
302.834.3466



December 20, 2010

Kathleen Sheehy
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

via eFile & U.S. Mail

RE: Second Prehearing Memorandum Regarding Material Issues of Fact
OAH Docket No.3-2500-21662-2
PUC Docket No. WS-08-1233; CN-09-1186

Dear Judge Sheehy:

Enclosed for filing please find Second Prehearing Memorandum, addressing the points raised in your December 8, 2010 Prehearing Order.

This Memorandum and Spreadsheet is being eFiled and served via email to all parties of record, with a hard copy to you.

Very truly yours,

Carol A. Overland
Attorney at Law

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of the Application for a
Large Wind Energy Conversion System

OAH Docket No.:3-2500-21662-2
PUC Docket No.:WS-08-1233; CN-09-1186

**GOODHUE WIND TRUTH
SECOND PREHEARING MEMORANDUM**

In the First Prehearing Order in this matter, parties were asked to address several issues, including identification of specific sections of the Goodhue County Wind Ordinance that are more stringent than those of the state; whether those sections conflict, supplement, or address areas not regulated; statement of which sections should be applied, describing any material facts regarding standards in dispute, and describing evidence that parties intend to offer at hearing.

I. SECTION BY SECTION IDENTIFICATION

Goodhue Wind Truth submitted the following section by section in its prior memorandum:

- Section 4 - District Regulations –
 - Subd. 1, Neighboring Dwellings, Road RoW, Other RoW, Wetlands, Other Structures.
- Section 5 - Requirements and Standards
 - Lighting, Discontinuation and Decommissioning
- Section 6 – Stray Voltage
 - Pre-Construction Stray Voltage Test, Send test to, Fix Stray Voltage
- Section 7 – Preliminary Acoustic Study for Commercial WECS
 - One mile buffer

These narrowed issues were taken from a comparison of the Goodhue County Wind Ordinance, PUC Chair Boyd's chart requested from Commerce (attached) and produced at the PUC meeting, and the contemporaneous off-the-cuff review by counsel for AWA Goodhue Wind. Attached is an Excel spreadsheet, with more detail, and with columns addressing questions raised in the

Prehearing Order. Where items are deemed “not at issue,” this is based on statements of Applicants at PUC agenda meeting and may need to be verified in this docket.

Goodhue Wind Truth again wishes to address the matter of requested “scientific evidence.” Although this proceeding may expressly not be “a due process challenge of the validity of the ordinance,” the scientific support needed for the Goodhue County Board has been demonstrated in materials included in the record. GWT will gladly resubmit information already submitted to the County, as we expect the County to submit its full record regarding the ordinance. Goodhue Wind Truth remains mindful that this is an administrative proceeding, and not a personal injury matter where causation is at issue, and where the level of “scientific evidence” necessary is not that of a personal injury case.

Goodhue Wind Truth submits its chart of issues, attached, for consideration.

December 20, 2010



Carol A. Overland #254617
Attorney for Goodhue Wind Truth
Legalelectric
P.O. Box 176
Red Wing, MN 55066
(612) 227-8638
overland@redwing.net

More stringent sections of Article 18	Conflict with, supplement, or address areas not previously regulated	Should section be applied to any permit issued to Applicant	Material facts regarding those standards that are in dispute	Type of evidence party would intend to offer
Section 3, Subd. 6 - Procedures				
Liability Insurance	Addresses area not previously regulated	Yes, it's a reasonable requirement, protects public interest	Whether applicant would have liability insurance and specifics of coverage	Binder or commitment of applicants, obtained through information requests
Section 4, Subd.1 – District Regulations				
Neighboring Dwellings	Supplements existing setbacks, extends to 2,700 feet. ½ mile setback has been previously ordered by PUC (Lakeswind).	Yes, reasonable requirement, protects health and safety of non-participating neighbors.	Whether wind turbines built in other jurisdictions have generated complaints regarding health or safety issues from neighbors or other affected parties.	Evidence of complaints to local governments or other regulatory authorities
750 ft from participating homes				
10 RD from non-participating homes (~2,700 feet)				
Road RoW	Supplements existing setbacks, extends sufficient to prevent turbine from falling on roadways.	Yes, necessary for public safety. State setback does not provide fall-down distance.	Whether state 250 foot setback provides sufficient distance for a turbine to fall over without landing on road.	Documentation of engineered fall distance obtained through IRs
1.1x turbine height				
Other RoW	Supplements existing setbacks, extends sufficient to prevent turbine from falling on other RoW.	Yes, necessary for public safety. State setback does not provide fall-down distance.	Whether state permit setback provides sufficient distance for a turbine to fall over without landing on other RoW.	Documentation of engineered fall distance obtained through IRs
Lesser of 1.1x turbine height or fall zone + 10 feet				

Wetlands	Supplements existing prohibition of placing turbine in a wetland, expanding it to 1,000 feet or 3x5 RD from wetland.	Yes, necessary for protection of wetlands and wildlife.	What distance is recommended for protection of wildlife landing, taking off and flying over their wetland habitat.	Data Practices Act request to DNR and FOIA to USFWS. Subpoena DNR for documents, Comment, and to testify at hearing.
1,000 feet or 3x5 RD			What other infrastructure restrictions (state and/or federal) exist near and in wetlands.	
Other Structures	Supplements existing setbacks, extends sufficient to prevent turbine from falling on other structures	Yes, necessary for public safety. State setback does not provide fall-down distance	Whether state 250 foot setback provides sufficient distance for a turbine to fall over without landing on other structures.	Documentation of engineered fall distance obtained through IRs
Lesser of 1.1x turbine height or fall zone + 10 feet				
Other Existing LWECS, internal spacing	Supplements by removing provision that 20% may sited closer to each other.	Yes, spacing provides public safety margin	Not at issue in this proceeding	Not at issue in this proceeding
Bluffs	Supplements by adding bluffland buffer (similar to protections of St. Croix River)	Yes, protects scenic bluffland	Not at issue in this proceeding	Not at issue in this proceeding
Section 5 – Requirements and Standards				
Subd. 1, Safety Design Standards				
Subd. 1-5 not at issue, although different	Supplements, as this is a formalization of what would typically be done for any project	Yes	Not at issue in this proceeding	
Subd. 6, Lighting	Supplements	Yes	Question of FAA regulations	FAA regulations
Lighting shall adhere to but not exceed requirements of FAA, red pulsating incandescent lights should be avoided				

Subd. 7-11	Supplements where different	Yes	Not at issue in this proceeding	Not at issue in this proceeding
Subd. 12, Discontinuation & Decommissioning	Supplements where different	Yes, these provide financial assurance that project will not be abandoned and will be properly decommissioned.	What are decommissioning plans, how are applicants bound to properly decommission, what is necessary to assure project is properly decommissioned, what financial assurance is necessary?	Decommissioning plan, demonstration of escrow or letter of credit, cost estimates for decommissioning, cost estimates for decommissioning of other projects, decommissioning plans, agreements and assurances from other projects, all gleaned from Information Requests and Data Practices Requests
	Additional requirement	Yes	Not at issue in this proceeding	Not at issue in this proceeding
Section 6 – Stray Voltage				
Pre-Construction Stray Voltage Test	Addresses area not previously regulated	Yes, Goodhue County is reasonably concerned about potential for stray voltage. Two of earliest Appellate cases regarding stray voltage were in Goodhue County, Cook and Kispert. The County is protecting its ag economy.	Material facts not at issue. Issue is that applicants do not want to be bound by ordinance.	Material facts not at issue. Issue is that applicants do not want to be bound by ordinance.
	2 tests required at all feedlots within project and surrounding one-mile			
Send test to	Addresses area not	Yes, Goodhue	Material facts not	Material facts not

Send test to PUC, OES, property owner, local utility and county	previously regulated	County is reasonably concerned about potential for stray voltage. Two of earliest Appellate cases regarding stray voltage were in Goodhue County, Cook and Kispert. The County is protecting its ag economy.	at issue. Issue is that applicants do not want to be bound by ordinance.	at issue. Issue is that applicants do not want to be bound by ordinance.
Fix stray voltage Fix any stray voltage attributable to project	Addresses area not previously regulated	Yes, Goodhue County is reasonably concerned about potential for stray voltage. Two of earliest Appellate cases regarding stray voltage were in Goodhue County, Cook and Kispert. The County is protecting its ag economy.	Material facts not at issue. Issue is that applicants do not want to be bound by ordinance.	Material facts not at issue. Issue is that applicants do not want to be bound by ordinance.
Section 7 – Preliminary Accoustic Study for Commercial WECS				
Subd.1, Noise Study Prove project compliant with MPCA standard	Supplements, must comply with MPCA. PUC has been ordering noise studies in projects	Yes.		
Subd. 2, One Mile Buffer Model indicate that project is compliant at all receptors within one-mile of project	Supplements, requires compliance within one mile.	Yes, ordinance is focused on preventative protection of public health and safety.	Is noise a public health and safety issue?	Provide information entered into county ordinance process, provided to county board, regarding noise.
Section 8	Not at issue			
Section 9	Not at issue			