

OAH Docket No. 8-2500-21395-2  
 MPUC Docket No. IP-6701/WS-08-1233

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
 600 NORTH ROBERT STREET  
 ST. PAUL, MINNESOTA 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
 121 Seventh Place East, Suite 350  
 St. Paul, Minnesota 55101-2147

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

STATE OF MINNESOTA    )  
                                   ) ss.  
 COUNTY OF RAMSEY     )

#### AFFIDAVIT OF DEBORAH PILE

1. My name is Deborah Pile. I am employed by the Minnesota Department of Commerce, Office of Energy Security (“OES”) as Supervisor of the Energy Facilities Permitting unit. In this position, I supervise a staff of nine persons whose duties include processing permit applications for large energy facilities (pipelines, transmission lines, power plants and wind energy conversion systems). My other job responsibilities include developing processes and procedures for program implementation and improvement, providing technical assistance to applicants and local governments on the various permitting processes, and identifying and undertaking necessary technical studies. I have held this position since May 2005, initially with the Department of Environmental Quality before the facility permitting group became part of the Department of Commerce in July 2005.<sup>1</sup>

2. Prior to my present position, I worked in other state governmental positions, including as Director of the Local Planning Assistance Center with the Office of Strategic and Long Range Planning and Director of the Office of Planning and Review with the Pollution Control Agency. I have been employed by the State of Minnesota for 35 years.

3. My education includes a Bachelor of Science degree in Geography from the Pennsylvania State University College of Earth and Mineral Science, and graduate work in geography at the University of Minnesota.

<sup>1</sup> 2005 Minn. Laws Ch. 97 (SF 1368).

4. In preparing this affidavit, I refreshed my recollection of activities leading up to passage of sections in the Next Generation Energy Act of 2007 that relate to county delegation of permitting authority for Large Wind Energy Conversion Systems. Attached to this Affidavit as Exhibit A are documents from my files relating to matters discussed below.

5. In 2006, the Department of Commerce became aware that there were new wind energy systems being developed that did not fit well within the permitting processes of the state or county governments, and that new legislation would be necessary to address issues that had arisen under the existing wind energy permitting statutes.

6. Under the direction of Edward Garvey, then Deputy Commissioner of Commerce, a workgroup was formed to address possible new legislation. On August 4, 2006, Mike Bull, Assistant Commissioner of Commerce for Renewable Energy, sent e-mail messages announcing the establishment of the Minnesota Wind Permitting Workgroup (“Workgroup”). The message explained that the purpose of the Workgroup was to develop a legislative proposal to clarify by statute the definition of Large Wind Energy Conversion System (LWECS) and county permitting authority.

7. The Workgroup was composed of a broad stakeholder group of developers, county planning and zoning administrators, wind advocates, utility representatives, and staff of the Department of Commerce and Public Utilities Commission. Mark Lindquist, energy policy specialist with the Minnesota Project, chaired the working group.

8. Workgroup members included Mark Lindquist, Minnesota Project; Annelee Garletz, Association of Minnesota Counties; Brian Green, Redwood County; John Biren, Lyon County; Steve Lawrence, Pope County; Kevin Walli, Fryberger and Associates; Paul White, Project Resources Inc; Tim Seck, PPM Energy; Mark Willers, MinWind; Shalini Gupta, Isaac Walton League; and Mike Bull, Deborah Pile and Adam Sokolski of the Department of Commerce. Mr. Sokolski was a member of my staff at that time, primarily working with permit applications for LWECS.

9. The Workgroup met October 5, October 26 and November 28, 2006, to define issues, evaluate options and development recommendations.

10. The Workgroup considered the following four legislative options: (1) Increasing the state permitting threshold from 5 MW to 25 MW; (2) developing a “local review” option based on the Local Review provision of the Power Plant Siting Act (216E.05) for wind projects of 25 MW and below; (3) developing a delegation option for projects of 25 MW and below patterned after the Pollution Control Agency’s county feedlot program (116.07, subd. 7); and (4) removing the state preemption of local siting authority in Minn. Stat. § 216F.07.

11. The Workgroup concluded that local preemption should be retained in statute, and that the delegation option which was drafted based on the feedlot program model should be carried forward as the Workgroup’s legislative proposal. The proposed legislative changes on county delegation were finalized by the Department of Commerce and included as Article 6 of the Next

Generation Energy Act of 2007 (SF 145).<sup>2</sup> The provision regarding application of county standards was originally included in section 216F.08, along with assumption of LWECS permitting responsibility by counties, in bills as they were introduced.

12. Counties that have assumed jurisdiction under Minn. Stat. § 216F.08 for LWECS from 5 MW to 25 MW include Lyon, Meeker, Murray, Stearns and Jackson counties. Since enactment of sections 216F.08 and 216F.081, I have spoken with county representatives from these and other counties. It is my understanding from these conversations that counties have understood section 216F.081 to require them to assume permitting responsibility for LWECS of 5 MW to 25 MW before they have authority to adopt more stringent standards under section 216F.081. This is consistent with the feedlot delegation statutory language after which the wind delegation approach was modeled (Minn. Stat. § 116.07, subd. 7(k)).

13. Minn. Stat. § 216F.011(b) provides in relevant part that the Commissioner of the Department of Commerce shall make an initial size determination to determine jurisdictional authority over a project.

(b) The commissioner shall provide forms and assistance for project developers to make a request for a size determination. Upon written request of a project developer, the commissioner of commerce shall provide a written size determination within 30 days of receipt of the request and of any information requested by the commissioner. In the case of a dispute, the chair of the Public Utilities Commission shall make the final size determination.

14. In addition to making the initial size determination, the OES EFP staff provides technical assistance to counties pursuant to Minn. Stat. § 216F.08(d). Under these provisions and according to its general responsibilities for processing permit applications and providing assistance to the Public Utilities Commission, my staff and I are the primary agency contacts for counties and wind developers. As part of this function, after enactment of sections 216F.08 and 216F.081, and reading these two provisions together, my staff and I initially advised counties and other persons that counties had authority to adopt more stringent standards for LWECS greater than 5 MW in size that would be considered by the Commission pursuant to section 216F.081 *only* if a particular county had assumed jurisdiction for LWECS of 5 MW to 25 MW in size under section 216F.08(a). This advice was based on the Workgroup proposal, which survived in legislation substantially the same as developed by the workgroup prior to the 2007 legislative session.

15. OES EFP continued to advise that counties must first assume jurisdiction over LWECS up to 25 MW before adopting more stringent standards under section 216F.081 until we became aware that Commission staff had interpreted section 216F.081 during the course of processing the AWA Goodhue application to mean that any county, regardless of assuming jurisdiction for

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<sup>2</sup> At the time that the Next Generation Energy Act of 2007 was enacted, the Office of Energy Security had not been established. Governor Pawlenty established the Office of Energy Security within the Department of Commerce by executive order in January 2008. The executive order did not change the operations of the energy facility permitting staff.

LWECS up to 25MW in size, could adopt more stringent standards which the Commission would be required to consider under section 216F.081.

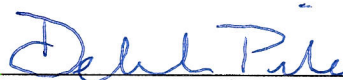
16. The Commission speaks through its orders. To date, the OES EFP is unaware that the Commission has considered legal arguments or issued a formal order interpreting section 216F.081. However, the November 2, 2010 order referring this matter to the Office of Administrative Hearings may imply a request for the ALJ to provide a recommendation regarding the interpretation of section 216F.081.

17. The OES EFP believes that Assistant Commissioner Mike Bull clearly stated in response to questioning by a senate committee member that his interpretation of section 216F.081 was that the application of county standards would apply to those counties who assumed permitting authority for LWECS up to 25 MW. A quorum of the members of the Senate Energy, Utilities, Technology and Communications Committee were present and heard Mr. Bull's response, and the legislation being considered at that time included the two separated sections, 216F.08 and 216F.081.

18. My understanding of Minnesota law is that legislative history and intent is only considered if the interpreting authority finds a statute to be capable of more than one reasonable interpretation, and that the plain language of the statute otherwise will control. The OES EFP staff provides the information contained in this affidavit and the affidavit of Ingrid E. Bjorklund to assist the Administrative Law Judge in interpreting sections 216F.08 and 216F.081, should the ALJ find that the statutes are capable of more than one reasonable interpretation such that they should be read together, with consideration of legislative intent.

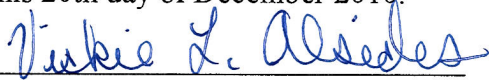
Further, your affiant sayeth not.

Dated: December 20, 2010



Deborah Pile  
Supervisor, Energy Facility Permitting  
Office of Energy Security  
Minnesota Department of Commerce

Subscribed and sworn to before me  
this 20th day of December 2010.



Vickie Lou Alsidis  
Notary Public

My Commission Expires

1/31/2015

