

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

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

**Pre-Hearing Order Submittal
of Belle Creek Township**

Pursuant to First Prehearing Order in the above-captioned matter, Belle Creek Township (hereinafter “Belle Creek” or “the Township”) provides the following submittal, identifying the specific articles of the Goodhue County Ordinance on Wind Energy Conversion Systems (“the Ordinance”) that are more stringent than the conditions imposed by the General Wind Permit Standards adopted by the Commission.

I. Section 4, Subdivision 1: Setback for Non-Participating Neighboring Dwellings.

A: The Ordinance states that the setback from “non-participating dwellings” shall be equal or greater to 10 Rotor Diameter (“10 RD”), although the setback can be less if an owner agrees to a reduced setback distance. Based upon the maximum rotor length allowed by the Draft Site Permit, 262.5 feet, the required setback for non-participating dwellings would be 2,625 feet.

B: This standard expressly conflicts with the 1,500 foot setback from non-participating dwellings, to which the Applicant has previously agreed.

C: Belle Creek believes that the Ordinance’s setback for non-participating dwellings should be applied as a condition of any permit to be issued to the Applicant.

D: The Applicant has argued that the application of the 10 RD setback is cost-prohibitive, and would prevent the Project from moving forward. There is a question of material fact as to whether the Project can move forward with the 10 RD setback; specifically, whether non-participating landowners can be made participating landowners through easement or other agreement. There is a question of material fact as to whether the 10 RD setback will reduce the impact of noise and shadow flicker on homes currently outside of the proposed 1,500 foot setback, but within the 10 RD setback. There is a question of material fact as to whether it is reasonable for a local unit of government to require the 10 RD setback in order to reduce the impact of noise, shadow flicker, and other impact on these homes.

There is a question of material fact as to whether the 10 RD setback is valid only to the extent that it addresses concerns with health and safety. The Project, as proposed, will also have negative impacts on property values, will increase costs incurred by Belle Creek Township, and will negatively impact the quality of life within the Township. All of these impacts directly impact the general welfare of the citizens of Belle Creek Township and Goodhue County, and it is within the sound discretion of Goodhue County and Belle Creek Township to regulate the Project's impacts on the general welfare.

E: Belle Creek Township intends to introduce evidence regarding the impact of noise and shadow flicker on homes that are located outside of the 1,500 foot setback, but inside the 10 RD setback. Belle Creek Township intends to introduce evidence as to the impact that the proposal has had on the Township, in terms of time and cost spent by the Board to address citizen concerns, and the anticipated costs the Township will incur in the future. It intends to introduce evidence establishing that a greater setback will reduce negative health and safety impacts of the Project, will result in fewer disputes requiring action by local units of government.

It intends to introduce evidence regarding the anticipated loss of property value that will occur as a result of the Project moving forward with the 1,500 foot setback, and the potential of the 10 RD setback to mitigate the loss of property value to private landowners in Belle Creek.

II. Section 4, Subdivision 1: Setback for Road Rights of Way.

A: The Ordinance states that the setback for road rights of way shall be “1.1 Times The Height.” This standard is more stringent than the standard contained in the General Wind Permit Standards, which contains a 250 foot setback from road right of ways.

As a threshold matter, the language of the Ordinance should be clarified by the Court. The Ordinance contains definitions for “Hub Height” (Section 2, Subd. 11) and “Total Height” (Section 2, Subd. 32.). The word “Height,” standing alone, is not defined in the Ordinance.

The setback requirements in Section 4 of the Ordinance apply to four categories of structures. The road right of way setback language for three of the four structure categories refers to “Total Height.” Only the road right of way setback language for Commercial WECS refers to “Height.” Because “Height” is not defined in the Ordinance, the term “Height,” as it applies to the setback requirement at issue, should be interpreted to mean “Total Height,” which is defined as the “highest point, above ground level, reached by a rotor tip or any other part of the WECS.” This reading maintains the internal consistency of the Ordinance.

B: Belle Creek believes that the Ordinance setback only supplements the General Wind Permit Standards. While the General Wind Permit Standards describe the 250-foot setback as “reasonable,” the Standards also state that the “Commission will therefore adopt a case-by-case approach to handling issues of this type where necessary and in the public interest.” (Standards, II.B.3.) Because the Standards anticipate a case-by-case examination of the setback

issue, Belle Creek believes that the Ordinance setback relating to road rights of way is supplemental to the Standards.

C: Belle Creek believes that the Ordinance’s road right of way setback should be applied as a condition of any permit to be issued to the Applicant.

D: There is a question of material fact as to whether a 250-foot setback provides sufficient protection to the public. The “fall zone” of the turbines should be calculated to determine whether the road right of way setback contained in the General Wind Permit Standards provides an adequate margin of safety. Setback distances are also designed to provide protection from ice throw. There is a question of material fact as to whether a 250-foot setback provides sufficient protection to the public related to ice throw. For example, GE Energy has collected and published public information regarding ice throw, which states that a safe distance has been calculated by the following formula: $1.5 \times (\text{hub height} + \text{rotor diameter})$. This formula is more in line with the setback adopted by Goodhue County than that contained in the General Wind Permit Standards.

E: Belle Creek Townships intends to introduce statements from the Township Board related to the concerns expressed to it by its citizens, and its responsibilities as the first level of government to deal with safety concerns of citizens. Belle Creek Township intends to introduce publicly available evidence such as the GE Energy information referenced above, that demonstrates a need for greater setback.

III. Section 5, Subdivision 8: Feeder Lines.

A: The Ordinance states that all “feeder lines equal to or less than 34.5 kilovolts in capacity, installed as part of a WECS shall be buried where reasonably feasible.” The General Wind Permit Standards state that feeder lines measuring 34.5kV may be placed overhead or

underground. The Ordinance requirement that feeder lines be buried is more stringent than the General Wind Permit Standards.

B: Belle Creek believes that the Ordinance setback supplements the General Wind Permit Standards, as the Standards anticipate that certain feeder lines may be buried.

C: Belle Creek believes that the Ordinance requirement that feeder lines be buried should be applied as a condition of any permit to be issued to the Applicant, even if the Applicant has previously agreed to bury feeder lines within Belle Creek Township.

D: There is a question of material fact as to whether it is reasonable and in the public interest to require that feeder lines be buried.

E: Belle Creek Townships intends to introduce statements from the Township Board related to the concerns expressed to it by its citizens, and its responsibilities as the first level of government to deal with safety and general welfare concerns of citizens. Belle Creek intends to introduce evidence to demonstrate that overhead feeder lines have greater potential for accidents and decrease the aesthetic value of the Belle Creek Township landscape.

IV. Section 5, Subdivision 10.F: Mitigation of Damage to Public Infrastructure.

A: The Ordinance states the following regarding the repair of damaged roads:

financial assurance in the form of a cash escrow or irrevocable letter of credit in an amount equal to 125% of the cost(s) to repair anticipated damages to public infrastructure including public roads and drainage systems as determined by the road authority, to be held by the County Public Works Director and the County Finance Director with a written release that all haul routes within their jurisdiction in Goodhue County have been returned to pre-construction condition by the Applicant/Developer.

The General Wind Permit Standards state only that the applicant “shall make satisfactory arrangements (including obtaining permits) for road use, access road intersections, maintenance and repair of damage with governmental jurisdiction [sic] with authority over each road.”

(Standards, p. 11). The Provision in the Ordinance is more stringent than the similar provision in the Standards.

B/C: Belle Creek believes that the Ordinance supplements the Standards, and that it should be applied as a condition to any permit issued to the Applicant.

D: As the road authority for township roads within the Township, Belle Creek is responsible for inspecting, maintaining, and repairing Township roads. The Belle Creek Township Board bears final responsibility to ensure that the damage caused by the proposed construction of the turbines will be fully repaired, and that the costs of such repairs will be fully borne by the Applicant. The only question of material fact is whether it is reasonable to require the Applicant to deposit money in escrow in order to ensure that proper road repairs are fully funded.

E: Belle Creek intends to introduce statements from the Township Board related to its role as road authority, including: the process it currently follows for inspecting, maintaining, and repairing roads; the future road maintenance needs of the Township excluding the damage and repairs that will be caused by construction of the Project; the future road maintenance needs of the Township including the damage and repairs that will be caused by construction of the Project; and the potential impact on the Township treasury if the repairs to the damage caused by the Project are not fully funded by the Applicant.

V. Section 6: Stray Voltage Testing for Commercial WECS Projects.

A: The Ordinance requires that the applicant offer to perform at least two stray voltage tests at all registered feedlots within the proposed project boundary. The General Wind Permit Standards do not contain any stray voltage testing requirements, therefore the Ordinance requirement is more stringent.

B/C: Belle Creek believes that the Ordinance requirement conflicts with the General Wind Permit Standards, and that the Ordinance requirement should be applied as a condition of any permit to be issued to the Applicant.

D: The only question of material fact is whether there is good cause for the Commission to exclude this testing requirement from the Applicant's permit.

E: Belle Creek Township intends to introduce public data regarding the number of registered feedlots in Belle Creek Township, and the surrounding area, to establish the extent of the testing that would be required under the Ordinance. Belle Creek Township intends to introduce evidence as to the cost of third-party testing for the impact of stray voltage on feedlots, and the results of previous stray voltage testing. Belle Creek intends to offer statements in support of the proposition that pre-construction testing is in the best interest of the citizens of Belle Creek and the Applicant, as it will provide baseline data for any future disputes regarding stray voltage and its impact on livestock.

Respectfully Submitted,

Date: December 20, 2010

STROBEL & HANSON, P.A.

/s/

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