

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

OFFICE OF ENERGY SECURITY COMMENTS

The Office of Energy Security Energy Facility Permitting staff (“OES EFP”) provides these comments and the attached affidavits of Deborah Pile and Ingrid E. Bjorklund in response to the Administrative Law Judge’s (“ALJ”) request for further submissions in this proceeding. To further assist the ALJ, the OES EFP also provides as attachments the OES EFP’s previously filed comments and recommendations to the Minnesota Public Utilities Commission (“Commission”). Specifically, the OES EFP responds to the ALJ’s request in Paragraphs 8 and 13 of the First Prehearing Order.

I. Paragraph 8

Paragraph 8 of the First Prehearing Order asks parties to identify the specific sections of Article 18 in Goodhue County’s October 5, 2010 ordinance that they believe are more stringent than those recommended by OES EFP for this project, and to state whether the sections specified expressly conflict with the standards proposed by OES EFP, merely supplement those standards, or address areas the Commission has not regulated in the past. In this regard, OES EFP staff obtained a “Word” copy of the ordinance from Goodhue County, and used it to create a side-by-

side matrix which summarizes the OES EFP's review of the provisions in Goodhue County's ordinance. This document is included as Attachment 1.

The OES EFP also wishes to provide some additional background information to the ALJ to explain its recommendations to the Commission and their context. First, OES EFP provided briefing papers to the Commission along with the proposed permit. Goodhue County adopted the new ordinance containing wind siting standards on October 5, 2010. The briefing papers had been substantially completed before OES EFP became aware of the new Goodhue County ordinance. The OES EFP initial briefing papers were filed in e-dockets on October 13, 2010, before the OES EFP had time to consider the effect of Goodhue County's standards on this project. The OES EFP comments and recommendations are included with these comments as Attachment 2. The OES also filed supplemental comments on October 20, 2010 addressing the Goodhue County ordinance and its effects on the recommendations made by OES EFP. The supplemental comments are included as Attachment 3. The Commission considered the matter at its October 21, 2010 agenda meeting.

In his supplemental comments on the Goodhue County standards, Mr. Hartman of OES EFP concluded that the setback standard of 10 rotor diameters was not reasonable. Att. 3 at 3-4. With regard to stray voltage, Mr. Hartman summarized the scientific information and experience in Minnesota with regard to stray voltage related to wind turbines and their associated transmission lines. *Id.* at 2-3. He concluded that the requirement of Article 18, Section 6 is not relevant to this docket and that stray voltage provisions should not be included in the proposed site permit. He further concluded that the 10 RD setback was not reasonable in this instance. *Id.* at 4. OES EFP believes that unreasonable standards constitute good cause for the Commission not to apply them.

II. Paragraph 13

In Paragraph 13 of the First Prehearing Order, the ALJ requests parties to brief certain legal issues. The Order requests, *inter alia*, that:

In particular, the Administrative Law Judge would like the parties to brief the issue whether Minn. Stat. § 216F.081 is intended to apply only to counties that have assumed the responsibility to process applications and issue permits for LWECs with a combined nameplate capacity of less than 25 MW, pursuant to Minn. Stat. § 216F.08.

The OES EFP provides the affidavits of two individuals to provide information responding to this request. First, the affidavit of Ms. Deborah Pile, Supervisor of the Energy Facility Permitting staff, provides information about the workgroup that developed the proposed legislation on county delegation of permitting authority for siting wind turbines. As one of the three persons from the Department of Commerce who were members of the workgroup,¹ Ms. Pile's recollections, supported by her notes and other documents, provide her assessment of the background and development of the legislative proposal for delegation of permitting authority to counties. Ms. Pile's affidavit is included as Attachment 4.

Second, the affidavit of Ms. Ingrid Bjorklund, an employee of OES, is included as Attachment 5. Ms. Bjorklund, a licensed attorney in Minnesota, reviewed the legislative history of Minn. Stat. §§ 216F.08 and 216F. 081, as summarized in her affidavit. Although the Commission appears to have interpreted section 2116F.081 to mean that the Commission is required to consider Goodhue County's more stringent standards, the OES EFP relies on its factual background to conclude that section 216F.081 may be capable of more than one reasonable meaning, and that the factual information provided in Attachments 3 and 4 is relevant to the ALJ's request as to "whether Minn. Stat. § 216F.081 is intended to apply only to counties

¹ Other members of the workgroup from the Department of Commerce were Assistant Commissioner Mike Bull and Deputy Commissioner Edward Garvey. OES EFP notes that the Office of Energy Security was not established until January 2008, by executive order.

that have assumed the responsibility to process applications and issue permits for LWECs with a combined nameplate capacity of less than 25 MW, pursuant to Minn. Stat. § 216F.08.”

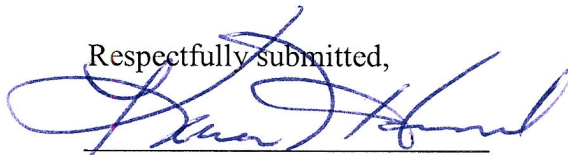
III. Goodhue County authority to adopt more stringent standards for LWECs.

As Ms. Pile’s affidavit explains, OES EFP previously advised counties, including Goodhue County, that unless a county assumed authority for permitting LWECs from 5 MW to 25 MW pursuant to the requirements of Minn. Stat. § 216F.08, section 216F.081 did not allow counties to adopt standards for LWECs that are more stringent than the Commission’s general permit standards. After OES EFP staff became aware that Commission staff did not interpret the statute in the same manner, OES EFP ceased providing its previous advice in response to such inquiries.

OES EFP hopes that the factual information it provides is helpful to the ALJ in response to the requests in the First Prehearing Order and remains available to assist the Commission and the ALJ in this proceeding.

Dated: December 20, 2010

Respectfully submitted,



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