OAH No. 3-2500-21662-2, MPUC Dkt No. IP6701/WS-08-1233

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION BY AWA GOODHUE WIND, LLC

FOR A SITE PERMIT FOR A LARGE WIND ENERGY CONVERSIONS SYSTEM FOR A 78 MW

WIND PROJECT IN GOODHUE COUNTY

DIRECT TESTIMONY

OF

LEE A. "COLE" ROBERTSON

ON BEHALF OF

AWA GOODHUE, LLC

JANUARY 28, 2011

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

DIRECT TESTIMONY OF LEE A. (COLE) ROBERTSON

I. INTRODUCTION AND QUALIFICATIONS

Q: Please state your name and business address.

A: Lee Allison "Cole" Robertson; 8117 Preston Rd., Suite 260, Dallas, TX 75225. I am testifying on behalf of AWA, Goodhue, LLC.

Q: By whom are you employed and what is your position?

A: I am employed by BP Capital, L.P. (BP Cap), an investment holding company owned 100% by Thomas Boone Pickens, Jr. I manage the activities of Mesa Power Group, LLC, (Mesa Power) a renewable energy development and ownership company, of which Mr. Pickens also owns.

Q: Please summarize your educational background and professional experience.

A: I hold a Bachelor of Business Administration in Accounting along with a Master of Science in Finance, both from Texas A&M University – College Station. I have been with BP Cap/Mesa Power for 2½ years in various financial and management roles. Prior to joining BP Cap/Mesa Power, I was employed by Ernst & Young, LLP in Dallas, Texas working in their Assurance and Advisory Business Services practice.

Q: What is the purpose of your direct testimony?

A: One of the key issues of the hearing is to determine the impacts to the project if the Minnesota Public Utilities Commission (MPUC) were to apply Goodhue County's more stringent wind regulation standards against our project. I describe the financial impacts to AWA Goodhue and the project if the MPUC applied the County's wind standards, particularly the 10 rotor diameter setback from non-participating dwellings. I will also briefly discuss three particular provisions of the County ordinance: stray voltage, discontinuance/decommissioning and insurance.

II. PROJECT FINANCIAL INFORMATION

Q: When did you come into the project?

A: National Wind, LLC, a Minnesota wind development company, originally organized and developed the project. We purchased the project's development assets from National Wind, LLC in December of 2009.

Q: How much has AWA Goodhue invested in the project to date?

A: To date, AWA Goodhue has invested in excess of $7,500,000, which includes our project acquisition and development costs.

Q: If you are able to obtain a site permit with reasonable conditions, how do you intend to finance construction of the project?

A: We intend to finance this project through a combination of common equity, equity capital from tax sensitive investors that would look to take advantage of the federal Investment Tax Credit (in the form of a 30% cash grant), depreciation credits, or other available tax credits and commercial bank financing, including likely a construction loan converted into a long-term loan covering the operational period of the project.

Q: What is the estimated cost of the project?

A: As currently proposed, we estimate the overall capital cost of the project at approximately $179 million.

Q: In his direct testimony, Mr. Ward mentions that the project has two separate, 39 MW power purchase agreements with Xcel Energy. Can you describe the financial aspects of the PPAs?

A: The exact pricing terms of the PPAs are confidential. Overall, however, based on our projections for how much energy production we expect to get from our proposed 50 turbine layout, we expect to receive approximately $17 million annually in revenues from the project. The PPAs represent all of the project revenues we expect over the 20-year term of the PPAs.

Q: What do the PPAs say about when the project has to be commercially operable?

A: The PPAs require that the project be in service and operating on a commercial basis no later than December 31, 2011.

III. FINANCIAL IMPACTS OF COUNTY ORDINANCE

Q: How would application of the County's ordinance financially affect the project?

A: As described in the testimony of Mr. Charles Burdick, the County's property line, neighboring dwelling, and wetland setbacks make it physically impossible to site the project. If the MPUC applies the 10 RD standard, for instance, there is no practical way we could comply, and it will effectively kill the project. We would lose all of the money we have invested in the project to date, and any possibility of profit on that investment.

Q: Why would application of the 10 RD setback destroy the project? Can't you just take alternative measures such as acquiring more land, putting the turbines in different locations, etc.?

A: Our developer, Charles Burdick, will discuss in more detail the practical and physical limitations that prevent us from being able to simply acquire more land, relocate any of our proposed 50 turbines under a 10 RD setback standard, or take other measures to comply.

Even we assumed that the project could acquire enough land, either within the project footprint, anywhere in the County, or anywhere in Minnesota for that matter, a 10 RD setback standard effectively spreads out the project so substantially that it quickly becomes cost prohibitive.

Q: What do you mean?

A: We performed an analysis to show that even if we could obtain enough property to build a project that could accommodate a 10 RD setback, the additional cost to the project in property acquisition (leases, easements, etc.), development costs, construction costs and the loss of wind resource, would add an additional $10/MWhr - $20/MWhr to our contracted PPA rate with Xcel. Needless to say, adding that kind of costs to this project (or any energy facility) would make it very expensive and substantially above market. In reality, what it means is that if a project had to accommodate a 10 RD setback, it would have to bid a PPA rate so high that Xcel Energy (or any utility) would not acquire the energy from such a project in the first instance.

Q: Are there other financial impacts that may be more subtle but nonetheless substantial?

A: Absolutely. We have worked to develop and site this project based on best industry practice, the MPUC's existing siting standards, and other applicable legal requirements. If, for instance, application of the County's property line or other rights-of-way standards required us to move turbines to different sites within our footprint, we would incur a number of additional costs to do so. For example, the increased costs would include re-worked permitting, engineering, survey work, wetland delineation, and soil borings. It is also likely the new location would have a lesser wind resource and therefore decrease energy production, or a combination of factors. Finally, spreading out the turbines would require increased land impacts, additional access roads, collection lines and other infrastructure.

The point here is that while in theory one might try to site a project to accommodate a 10 RD setback standard, the financial reality is that the project would be so expensive that it would be uneconomic to do so, and the utility would find other, more competitive resources.

Q: Part of the problem is that with the longer rotors needed for a 1.5 MW or 1.6 MW turbines, a 10 RD setback standard results in a very long setback – 2,707 feet – and thus makes it difficult or impossible to find additional land. What if you went to smaller turbines and shorter rotors?

A: Following the MPUC's decision to send the matter to the OAH, we investigated the possibility of a smaller project using smaller turbines/rotors at the same fifty turbine locations we have planned for our 78 MW project.

Q: What did your review show?

A: We looked at a number of different scenarios, using a number of different types and turbine sizes, including models from established turbine manufacturers such as Gamesa, Vestas, Enercon, Fuhrlander, and others.

As we pointed out to the MPUC in October, there are only a handful of sites where we could actually physically accommodate a 10 RD setback using our proposed 1.5 MW or 1.6 MW GE turbines. This means that if the MPUC applied the 10 RD setback standard and we were unable to employ smaller turbines/rotors, we would be left with roughly a 10 MW project. Because we have two 39 MW PPAs with Xcel Energy (collectively 78 MW), that obviously wouldn't work.

But because we were very concerned about what the MPUC's decision meant for the project, we wanted to see if could salvage any part of it. As a result, we looked look at whether we could build at least one 39 MW project using smaller turbines/rotors. That is, if we could save one of the PPAs by using smaller turbines/rotors, that would be better than no project at all.

Our review actually showed that it would be physically possible under some scenarios to build a 39 MW project by using smaller turbines/rotors. For instance, we found out that if we could site up to seven existing GE turbines and supplemented them with thirty 850 kilowatt (0.85 MW) turbines from another manufacturer, which have rotor diameters of 171 feet (52m), we could theoretically build an approximately 36 MW project.

Q: So why not do this?

A: Putting aside for the moment that pursuing a smaller project using smaller turbines assumes right off the top that we would have to give up more than half our project with nothing in return, the economic analysis we performed showed that in order for the smaller project to be profitable under the existing PPAs – as we will not be entitled to renegotiate new PPA prices with Xcel Energy – pricing for the smaller turbines would need to be in the \$600-\$700/kilowatt range. The quotes we received from the turbine manufacturers for their smaller turbines/rotors, however, were actually closer to \$1200/kw - \$1,300/kW, or more than twice the amount necessary to make the project even theoretically doable.

Q: Is there any reason to believe you weren't getting competitive quotes from the manufacturers?

A: The economy at large, as well as the wind industry, is slow. Turbine pricing right now is as low as it's been in many years. Turbine manufacturers have every incentive to be competitive with their quotes, as they are very anxious to move product.

Q: Why did you only look at using the existing turbine locations for the smaller turbines? Isn't it possible that you could fit more of the smaller turbines with the smaller rotors if you re-arranged the turbine locations?

A: We did not undertake any analysis using different turbine locations for a number of good reasons. First, if we proposed moving turbine locations at this point, that would likely require opening up the permitting activity again, which would likely cause even more delay, delay which we obviously cannot afford at this time because of the deadlines in our PPAs. Second, based on discussions with our experts, there are no better locations for wind production for smaller turbines than the locations we have selected for the GE turbines. Thus, at this point, we were confident that the locations we have now for the GE turbines would provide us with sufficient information to make an assessment of the viability of a smaller project using smaller turbines. As discussed, above, that turned out to be true.

Q: At one point, the project had claimed that delay caused by this proceeding had cost the project a considerable amount of money because it was unable to take advantage of the U.S. Treasury section 1603, 30% cash grant program. At the end of December 2010, Congress extended the program through 2011. Is it fair to say that the project hasn't been harmed by the delay caused by this contested case?

A: No. First, if we are able to obtain the benefits of the federal 1603 incentive, we will have already lost the time value of money by receiving the grant a year later than originally planned. We have calculated that as over $7,000,000 of lost benefit to the project.

Second, the delay has significant financial impact on the owners by not receiving cash flow off the project until a year later. That loss is approximately $212,000.

Finally, the most significant harm the contested case has had on the project is the cost of delays associated with the Interconnection Agreements and the anticipated costs of liquidated damages we may incur as a result of being unable to meet commercial operation dates in the PPAs. The project expects to spend close to $5 million in fees in order to keep the project alive through the contested case. This amount includes development and consultant costs, interconnection costs, landowner payments, preconstruction costs and legal fees.

Q: Wouldn't you need to spend these sums anyway?

A: We are required to spend millions of dollars in transmission interconnection costs that will be required if the project goes forward. The difference here is that we are now having to spend these sums without knowing whether we will have a project at the end of the day. Many of our costs, including legal and development costs, are directly attributable to the delay.

Q: What happens in the event that the project fails to meet the deadlines in the PPAs?

A: If we miss our commercial in-service dates, the PPAs provide first for penalties in the form of liquidated damages and second for possible termination of the contract.

If the project fails to achieve commercial operation by December 31, 2011, which even under the best circumstances is now questionable, the project stands to lose millions of dollars in liquidated damages.

Under any event, the project has to be operational no later than June 30, 2012, and if it isn't, Xcel Energy has the right to terminate the agreement, regardless of the amount of liquidated damages that we will have paid.

Q: Are there financial impacts in the event the MPUC applies the County's standards?

A: If the MPUC applies the County's standards, there is no way for this project to move forward. That will have consequences not only for AWA Goodhue, as discussed above, but will also adversely impact our landowners and also the County's own anticipated revenues from the project.

Q: Please explain.

A: Under our easement, lease, and participation agreements, this project will pay out approximately $768,000 on an annual basis to our participating landowners and community members. This escalates over time and represents approximately $20,000,000 over the life of the PPAs alone. If the MPUC applies the County's 10 RD setback, all of these payments will be forfeited.

In addition, the project will pay the County more than $302,000 annually in energy production tax payments, or more than $6,000,000 over the life of the PPAs. This, too, would be lost.

Q: This project qualifies as a CBED project. If the project doesn't go forward because the Commission applies the County's 10 RD setback standard, are there financial consequences to other Minnesota entities?

A: Yes. Our analysis shows that Minnesota individuals and/or entities stand to receive more than $161,000,000 in gross revenues over the life of the project, not including royalty payments to landowners. Those revenues will also be forfeited if the MPUC applies the County's 10 RD setback standard.

IV. STRAY VOLTAGE.

Q: What about the stray voltage standard?

A: As our expert Pete Malamen testifies, we do not believe that there is any reason for the Commission to apply the County's stray voltage standard. However, if the Commission does apply that standard, completing the two required pre-construction tests on the approximately 200 feedlots could result in a delay of over 9 months. In addition, it would cost the project approximately $1.6 million.

V. DECOMMISSIONING

Q: Subdivision 12 B of the County ordinance requires that WECS have a decommissioning plan that addresses how the WECS will be decommissioned at the end of its serviceable life or if were to become a discontinued use. Subdivisions 12 C – E require a decommissioning fund be created with either a cash escrow or letter of credit in an amount equal to 125% of the expected decommissioning costs. Does AWA Goodhue have any problem with complying with this requirement?

A: Yes. AWA Goodhue proposes instead that the decommissioning cost estimate and funding be made in year 15 of the project's life in order to ensure that the decommissioning fund more accurately reflects actual costs at the end of the project's expected useful life (25-30 years).

Q: Do you want the MPUC to apply the county's standard regarding decommissioning?

A: No we do not. We believe it is more reasonable and consistent with the MPUC's past practice that it require the decommissioning requirement in the draft OES site permit – which still requires AWA Goodhue to be responsible for decommissioning but allows AWA Goodhue to propose how and when its financial obligations are funded. Funding decommission costs in year 1 versus year 15 will cost the project an additional $1.5 million and does not provide substantive additional assurance that the funds are available and sufficient for their purpose.

VI. INSURANCE

Q: Section 3, subdivision 6 requires a Commercial WECS to show in advance of construction that it has sufficient liability insurance to cover the lifespan of the project.

What can you tell the ALJ about where the project is at with respect to liability (and other) insurance provisions?

A: Both the PPAs and the Development Agreement that we negotiated with the County, contain provisions that require that we obtain insurance for the project and set certain limits. We will honor the commitments in those agreements, including insurance.

Q: Will the AWA Goodhue applicant comply with the County's insurance standard?

A: It would be commercially irresponsible for us to proceed with project construction without that insurance coverage and we intend to have an adequate insurance plan in place prior to construction and throughout the life of the project. We are happy to share our insurance terms with the Commission, OES, and others, subject to reasonable protections for commercially sensitive information.

VII. CONCLUSION

Q: Are there any remarks you would like to make in conclusion?

A: Yes, there are three points that I would like to make in conclusion to emphasize the importance of allowing this project to move forward under the MPUC and Office of Energy Security's current standards for wind energy projects in the State of Minnesota and not applying Goodhue County's more stringent standards.

First, the 10 RD setback condition in the County's ordinance makes the project economically unfeasible. The setback would add \$10 - \$20/MWh costs to the project at a time when utility companies and the MPUC are trying to pull rates back due to current economic conditions and fuel costs of traditional generation. It is our conclusion that if the 10 RD setback were applied to ours and other projects, not only would it be physically infeasible, it would cause added costs to the ratepayers of the state of Minnesota that utility companies are not willing to absorb and the MPUC would not approve.

Second, we believe the project has been unfairly burdened with costs due to the County's actions and the project delays the process has caused. Even if the project moves forward under the existing MPUC and OES regulations and standards the project is faced with additional cost of over $15 million. These costs arise from time value of money timing differences in receiving the 30% cash grant and first year revenues, additional development costs, transmission interconnection costs and liquidated damages under provisions in the PPA.

Finally, if the MPUC upholds the County's ordinance it is not only the owners of AWA Goodhue who will feel the economic loss. The landowners of Goodhue County who are participating in the project will stand to lose approximately $20 million in royalty payments over the life of the project. Goodhue County will forfeit over $6 million in tax revenue and Minnesota entities and residents will lose over $161 million in gross revenue that was to be paid throughout the development, construction and operations of the project.

For these reasons and others pointed out in my testimony and the testimony of my colleagues, we believe there is good cause for the MPUC not to apply the Goodhue County's more stringent standards to AWA Goodhue wind energy project.

Q: Does this conclude your direct testimony?

A: Yes.