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AWA Goodhue, LLC

Docket Nos.: MPUC Docket No. IP6701/WS-08-1233 and OAH Docket 3-2500-21662-2

Response To: Daniel Schleck, Coalition for Sensible Siting and City of Goodhue Information Request No. 2

Date Received: February 14, 2011 Response Date: February 25, 2011

GENERAL OBJECTIONS

1. AWA Goodhue objects to each information request to the extent that it seeks information that is subject to the attorney-client privilege, work product privilege or other privilege on the ground that privileged matter is exempt from discovery.

2. AWA Goodhue objects to any and all instructions or definitions beyond the requirements imposed or permitted by the Minnesota Rules of Civil Procedure or Minnesota Rules Parts 1400 and 1405.

3. AWA Goodhue does not waive any of their general or particular objections in the event it furnishes information or documents coming within the scope of any such objections.

Without waiving the foregoing general objections, and pursuant to the Minnesota Rules of Civil Procedure and Minnesota Rules Parts 1400 and 1405, AWA Goodhue has enclosed responses to Coalition for Sensible Siting and City of Goodhue IR No. 2.

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Response To: Daniel Schleck, Coalition for Sensible Information Request No. 2
Siting and City of Goodhue

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Request No.	Coalition for Sensible Siting and City of Goodhue IR No. 2
2.	<p>1. Page 2 Line 2 – please provide all information on what constitutes “industry best practices” on which Mr. Ward bases his testimony.</p> <p>AWA Goodhue objects to this request as vague, overbroad, and unduly burdensome. It is unclear from this request whether CSS seeks “all information” on what constitutes “industry best practices” or “all information on which Mr. Ward bases his testimony.” In either case, the request is so broadly conceived as to make it impossible for AWA Goodhue to supply a thorough and complete answer. Subject to and notwithstanding the foregoing objection, however, Mr. Ward states as follows:</p> <p>Response: Industry best practices refer to the practices, methods, and standards of safety, performance, efficiency and economy generally recognized by industry members in the U.S. as good and proper which would be expected to accomplish the result intended at a reasonable cost and consistent with applicable laws, reliability, and safety. As used in my testimony, industry best practices are not intended to be limited to the optimum practices to the exclusion of all others, but rather to be a spectrum of good and proper practices used by others in the industry for projects of a similar type and size with similar geographical attributes. To design this project following industry best practices, we looked to the experience and advice of our development team, advisors, suppliers, contractors and regulators.</p>

Response by: Mark Ward

List sources of information: _____

Title: Chief Manager

Company: AWA Goodhue, LLC

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2.	<p>2. Page 3, Line 4 – please explain why Mr. Kalass’ opinions are relevant or calculated to lead to relevant evidence.</p> <p>Response: AWA Goodhue objects to this request because it seeks a legal conclusion. Subject to and without waiving the foregoing objection, AWA Goodhue responds as follows:</p> <p>As a participating landowner, Mr. Kalass provides a representative example of how application of the County’s more stringent standards will affect landowners participating in the project. Consistent with the ALJ’s Second Prehearing Order, Mr. Kalass’ testimony contributes to showing “all impacts” of applying the more stringent standards on the project.</p>

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2.	<p>3. Page 3, Line 20 – please explain the relevancy of the statement regarding the MPUC’s approval of the PPA as being “consistent with the public interest” What is the “public interest” that Mr. Ward is referring to? Does the “public interest” that Mr. Ward is referring to include public health and safety related to nuisance land uses? If so please explain.</p> <p>Response: AWA Goodhue objects to this request because it is vague, argumentative and seeks a legal conclusion. It is unclear what is meant by “nuisance land uses.” Subject to and without waiving the foregoing objection, AWA Goodhue responds as follows:</p> <p>See MPUC <i>Order Approving PPAs, Approving Contract Amendments and Requiring Further Filings</i>, Dockets No. E002/M-09-1349 and E002/M-09-1350, (April 28, 2010) p. 8-9. Under Minnesota Statute Sections 216B.01 and 216B.03, the Legislature has stated that it is within the public interest for the MPUC to regulate public utilities to provide retail customers with adequate and reliable services at reasonable rates. As part of this regulation, the MPUC reviews PPAs entered into by public utilities, including Xcel Energy, to make sure the PPAs are consistent with the Commission’s public interest standard. In this context, “public interest” referred only to the MPUC’s findings related to the PPAs.</p>

Response by: Mark Ward

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2.	<p>4. Page 3, Line 22 – please detail each and every participant’s compliance with the C-BED requirements for the Project.</p> <p>Response: AWA Goodhue objects to this request as vague, overbroad, and unduly burdensome. AWA Goodhue also objects to this information request because it seeks information that is not relevant and is not reasonably calculated to lead to relevant information. The MPUC specifically considered and decided not to include issues related to the project’s C-BED designation as part of this ALJ proceeding. (Audio Recording of MPUC Hearing, October 21, 2010, available on the MPUC website and MPUC Notice and Order for Hearing IP6701/WS-08-1233 (Nov. 2, 2010)). The probative value of this information is far outweighed by the burden to AWA Goodhue of describing the C-BED analysis already performed by the MPUC in the separate PPA dockets.</p> <p>Subject to and without waiving the foregoing objections, see MPUC Order Approving Power Purchase Agreements, Approving Contract Amendments and Requiring Further Filings in Docket Nos. E002/M-09-1349 and E002/M-09-1350 (April 28, 2010).</p>

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2.	<p>5. Page 5, Line 20 – Is project financing finalized? If so, please describe in detail the financing structure, the financing entities and the financing challenges.</p> <p>Response: No, project financing will not be finalized until the MPUC issues a site permit and certificate of need for the project.</p>

Response by: Mark Ward

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2.	<p>6. Page 6, Line 3 – Please provide copies of contracts, purchase orders or other agreements that confirm that ALL 50 turbines will be available to the applicant in the next 6 – 9 months.</p> <p>Response: A redacted copy of the turbine supply framework agreement is included on the enclosed CD. Due to the proprietary nature of the agreement, GE will not permit release of the full document, even subject to a nondisclosure agreement.</p>

Response by: Mark Ward

List sources of information: _____

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2.	<p>7. Page 6, Line 17 – Please provide all detail, correspondence, documents, personal notes or evidence that lead Mr. Ward to “understand” that the Goodhue County Ordinance was to apply only to projects of 5 MW or less.</p> <p>Response: AWA Goodhue objects to this request as vague, overbroad, and unduly burdensome. AWA Goodhue also objects to this information request to the extent it seeks information that is protected by the attorney-client privilege or work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>The document providing what is perhaps the strongest evidence is Article 18 of the Goodhue County Zoning Ordinance. In relevant part, the preamble states:</p> <p style="padding-left: 40px;">This ordinance is established to regulate the installation and operation of Wind Energy Conversion Systems (WECS) within Goodhue County that have a total nameplate capacity of 5 Megawatts or less (Small Wind Energy Conversion Systems – SWECS) and are not otherwise subject to siting and oversight by the State of Minnesota pursuant to Minnesota Statutes, Chapter 216F, Wind Energy Conversion Systems, as amended.</p> <p>See also Land Use Management memo to Goodhue County Board included in the County Board’s October 5, 2010 meeting packet, available on Goodhue County’s website. Additional responsive documents were provided on February 17, 2011 in response to CSS IR# 1-1.</p>

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2.	<p>8. page 6, Line 19 – Please provide copies of all detail, correspondence, documents, personal notes or evidence that this “understanding” was “regularly communicated” to the subcommittee and planning advisory commission.</p> <p>Response: AWA Goodhue objects to this request as vague, overbroad, and unduly burdensome. AWA Goodhue also objects to this request to the extent it seeks information protected by attorney-client privilege or other work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>See correspondence and meeting notes provided on February 17, 2011 in response to CSS IR #1-1.</p>

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2.	<p>9. Page 7, Line 14 – please provide copies of all detail, correspondence, personal notes, documents or evidence of Mr. Ward’s ex parte communications with public officials Mssrs. Samsuelson [sic] and Rehtzigel regarding this matter.</p> <p>Response: AWA Goodhue objects to this request as vague, argumentative, misleading, overbroad, and unduly burdensome. AWA Goodhue also objects to this request to the extent it seeks information protected by attorney-client privilege or other work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>See correspondence and meeting notes provided on February 17, 2011 in response to CSS IR #1-1.</p>

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2.	<p>10. Page 8, Line 11 – please provide copies of all detail, correspondence, personal notes, documents or evidence of the “considerable time and expense...” Mr. Ward refers to his statements here.</p> <p>Response: AWA Goodhue objects to this request as vague, overbroad, and unduly burdensome. AWA Goodhue also objects to this request to the extent it seeks information protected by attorney-client privilege or other work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>Regarding the considerable time spent on development, on page 4, ln. 22 – page 5, ln. 2, I state that the project applied for its site permit and certificate of need in October 2009. Despite the fact that Minnesota law provides that these processes are to take six and twelve months, respectively, it is now 16 months after the initial application and we are still several months from a final decision. Regarding the considerable expense, see the testimony of Mr. Cole Robertson, page 2, ln. 8-10, stating that AWA Goodhue has spent over \$7,500,000 developing the project to date.</p>

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2.	<p>11. Page 8, Line 19 – please give details and an explanation of Mr. Ward’s statements regarding the development agreement between the Applicant and the County given it is not even executed by the parties.</p> <p>Response: See AWA Exhibit 1-B for a copy of the Development Agreement containing the mutual commitments made by AWA Goodhue and Goodhue County. See Goodhue County Board Minutes dated October 5, 2010 noting Board approval for the Development Agreement.</p>

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2.	<p>12. Page 9, Line 23 – please provide copies of all detail, correspondence, personal notes, documents or evidence of Mr. Ward’s opinion that the County Standards are “excessive” with respect to protection of human health.</p> <p>Response: AWA Goodhue objects to this request as vague, overbroad, argumentative, misleading and unduly burdensome. AWA Goodhue also objects to this request to the extent it seeks information protected by attorney-client privilege or other work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>On page 10, ln. 4-13 of my direct testimony, I explain that the County standards are excessive because they don’t just regulate the project to address health and safety concerns, they prevent us from building the project altogether. These statements are based on AWA Goodhue’s entire direct testimony, including that prepared by other witnesses. See, for example, Mr. Chuck Burdick’s direct testimony, page 18, ln. 4 to page 19, ln. 7, for a discussion of why 10 RD is unnecessary to protect against sound and shadow flicker concerns.</p>

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2.	<p>13. Page 10, Line 1 – please provide copies of all detail, correspondence, personal notes, documents or evidence that the County Standards “prohibit” the project and why it can’t be smaller in scale or located to other parcels in the county?</p> <p>Response: AWA Goodhue objects to this request as vague, overbroad, and unduly burdensome. AWA Goodhue also objects to this request to the extent it seeks information protected by attorney-client privilege or other work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>See direct testimony of Mr. Cole Robertson and Mr. Chuck Burdick.</p>

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2.	<p>14. Page 10, Line 6 – please provide copies of all detail, correspondence, personal notes, documents or evidence that the County standards “prevent” the project and why it can’t be smaller in scale or located to other parcels in the county.</p> <p>Response: AWA Goodhue objects to this request as vague, overbroad, and unduly burdensome. AWA Goodhue also objects to this request to the extent it seeks information protected by attorney-client privilege or other work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>See direct testimony of Mr. Cole Robertson and Mr. Chuck Burdick.</p>

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2.	<p>15. Page 10, Line 20 – please provide copies of all detail, correspondence, personal notes, documents or evidence that the Applicant “understood the framework for designing, building and, importantly, permitting a large wind project in Minnesota and what consideration was given to Minn. Stat. 216F.081 during this process.</p> <p>Response: AWA Goodhue objects to this request as vague, overbroad, and unduly burdensome. AWA Goodhue also objects to this request to the extent it seeks information protected by attorney-client privilege or other work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>We understood the framework for designing, building and permitting large wind projects to be consistent with Minnesota General Permit Standards found in Docket No. E999/M-07-1102 and that of the Commission’s past practice when issuing site permits for LWECS. At the time our site permit and certificate of need applications were submitted, the Goodhue County WECS Ordinance (Article 18 of the 2007 Goodhue County Zoning Ordinance) applied only to SWECS (those under 5 MW). Even today, Goodhue County only intends to apply its WECS Ordinance to SWECS.</p>

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2.	<p>16. Page 11, Line 8 – please provide copies of all detail, correspondence, personal notes, documents or evidence that the County standards were not contemplated by the Applicant during the permitting and provide “wholly different, and prohibitive, setback standards...” not anticipated by the Applicant as potentially applicable under Minn. Stat. 216F.081.</p> <p>Response: AWA Goodhue objects to this request as vague, misleading, overbroad, and unduly burdensome. AWA Goodhue also objects to this request to the extent it seeks information protected by attorney-client privilege or other work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>See my response to CSS IR #2-15.</p>

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2.	<p>17. Page 12, Line 1 – please provide copies of all detail, correspondence, personal notes, documents or evidence that the County setback standards are a “disingenuous double-standard.”</p> <p>Response: AWA Goodhue objects to this request as vague, overbroad, and unduly burdensome. AWA Goodhue also objects to this request to the extent it seeks information protected by attorney-client privilege or other work product protection. Subject to and without waiving the foregoing, Mr. Ward responds as follows:</p> <p>This is my opinion and there are no notes, correspondence, documents or other evidence related to this statement.</p>

Response by: Mark Ward

List sources of information: _____

Title: Chief Manager

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