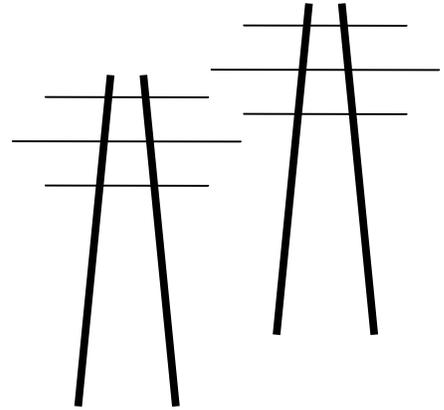


# Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617  
Energy Consultant—Transmission, Power Plants, Nuclear Waste  
overland@legalelectric.org

P. O. Box 176  
Red Wing, Minnesota 55066  
612.227.8638

P.O. Box 69  
Port Penn, Delaware 19731  
302.834.3466



May 16, 2011

Burl Haar, Executive Secretary  
Public Utilities Commission  
121 – 7<sup>th</sup> Place E, Suite 350  
St. Paul, MN 55101

RE: **Exceptions of Goodhue WindTruth**  
OAH Docket: 8-2500-21395-2; CN-09-1186 and WS 08-1233

Dear Dr. Haar:

Enclosed for filing please find Exceptions to Recommendation of ALJ of Goodhue Wind Truth in the above-entitled matter.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland  
for  
Goodhue Wind Truth

**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Ellen Anderson  
David C. Boyd  
J. Dennis O'Brien  
Phyllis A. Reha  
Betsy Wergin**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

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

OAH: 3-2500-21662-2  
PUC: IP-6701/WS-08-1233

**GOODHUE WIND TRUTH  
EXCEPTIONS TO RECOMMENDATION OF ALJ**

The PUC's referral of this matter to OAH presumes that Minn. Stat. §216F.081 is applicable, and requests development of the record regarding three narrow issues, focusing on whether there is "good cause" not to apply the County Ordinance. The ALJ instead focuses this Recommendation on determining whether the statute applies, and relies on unsupported fictions and speculation in two areas to support a tortured and disjointed "Recommendation" holding that there is no basis to apply the Goodhue County Ordinance. The Commission should take a hard look at this "Recommendation" and reject it. Exceptions to the Recommendation of the ALJ and a Proposed Order follow below.

The first area of fiction is that the Commission has established standards for siting of Large Wind Energy Conversion Systems -- it has not established standards. The Commission has established standards only for LWECs 25MW or less. Even if it is accepted that the Commission

has “established standards” through its case by case “implementation approach” the Judge must, under administrative rules, reject such rules as they are improperly adopted.

Secondly, the ALJ relied on “legislative history” put forth by Minnesota Office of Energy Security staff. This was proffered in Affidavit where a wind developer lobbyist made claims about hearsay of the then Governor’s energy policy work as “legislative intent,” the Affiants were not subject to cross-examination, and the ALJ rejected Goodhue Wind Truth’s subpoena request.

The bottom line of this proceeding is whether the Commission should apply the Goodhue County Ordinance. Goodhue County had authority to enact its Wind Ordinance, explicitly under Minn. Stat. §216F.081, and before the Commission is whether the County’s presumptively valid Ordinance should be applied, which it should, and whether it has been proven by the Applicant AWA Goodhue to be arbitrary and capricious, which it has not. There is no good cause for the Commission not to apply the County’s ordinance.

## **I. CHARGE TO THE ADMINISTRATIVE LAW JUDGE**

The charge of the Commission to the Administrative Law Judge was narrow:

*1. The ALJ assigned to this matter is requested to develop a record on every standard in Article 18 that is more stringent than what the Commission has heretofore applied to LWECS and make recommendations regarding each such standard whether the Commission should adopt it for Large Wind Energy Conversion Systems in Goodhue County. The Commission has identified two such standards in this Order (Section 4 and Section 6) but is not by this Order restricting the ALJ from developing the record and making recommendations regarding additional standards in Article 18 that upon further examination meet the “more stringent” qualification.*

*2. The ALJ assigned to this matter is requested to allow the parties to develop a factual record on the question of “good cause” as that term appears in Minn. Stat. § 216F.081 and to provide recommendations on whether, with respect to each standard in Article 18 identified in the course of her review as “more stringent” than what the Commission has heretofore applied to LWECS, there is “good cause” for the Commission to not apply the standard to siting LWECS in Goodhue County.*

*3. As the ALJ addresses the issues identified in the previous two sections, the ALJ is requested to include (but not limited to, by this Order) whether there is sufficient evidence regarding health and safety to support a 10 rotor diameter set-back for non-participating residents and the stray voltage requirements.*

PUC Notice and Order for Hearing, p. 2.

## **II. RECOMMENDATION OF ADMINISTRATIVE LAW JUDGE**

The Recommendation of the ALJ is circular and confusing, and has been reorganized below in Goodhue Wind Truth's Exceptions, reorganized in sections addressing the three points referred by the Commission. Exceptions to the Recommendation and Proposed Order follow.

### **A. BURDEN OF PROOF**

As the ALJ noted in the First Prehearing Order, this is an administrative contested case, where the burden of proof is on the applicant:

For any disputed issues of material fact, the Administrative Law Judge has determined that the Applicant would have the burden of proof<sup>1</sup>.

With that Burden of Proof comes a Burden of Production. Despite that clear burden, the Administrative Law Judge twists the county's express legislative authority and the parties' emphasis on the Applicant's burden of proof, and frames objections to shifting the burden of proof as an odd due process challenge, and first addresses the Burden of Proof at Finding 92:

92. Some of the other parties appear to take the position that they are not obligated to direct the Commission's attention to any evidence regarding health and safety to support the setback, as this would constitute an "impermissible shift in the burden of proof" onto them and away from the Applicant.<sup>2</sup> The Administrative Law Judge advised these parties at the outset of this proceeding that this contested case is not a due process challenge to the ordinance.<sup>3</sup> The Applicant is not required to show that the County acted unlawfully in the adoption of the ordinance or that the terms of the ordinance lack a rational basis. Rather, this is a contested case proceeding for the purpose of developing the record as directed by the Commission, so that the Commission may determine for itself its obligation to consider and apply the ordinance under Minn. Stat. § 216F.081 and to determine, if appropriate, whether there is good cause not to apply any provision of the ordinance.

---

<sup>1</sup> First Prehearing Order, p. 2.

<sup>2</sup> Goodhue County Brief at 14; Coalition for Sensible Siting Corrected Post-Hearing Memorandum at 6 (PUC "has no authority to question the County's basis or justification for its ordinances.").

<sup>3</sup> See First Prehearing Order 14 (Dec. 8, 2010).

Again, once more, clearly and concisely:

For any disputed issues of material fact, the Administrative Law Judge has determined that the Applicant would have the burden of proof<sup>4</sup>.

**B. LEGISLATIVE INTENT**

The framing and construction of the Recommendation of the ALJ hinges on disregarding the Commission’s presumption that Minn. Stat. §216F.081 is applicable. From that false start, the ALJ moves on to fabricate legislative intent contrary to the Commission’s presumption, utilizing a convoluted submission by the Office of Energy Security, including Affidavits of both Ingrid Bjorklund and Deborah Pile, not a party in this docket:

OES/EFP is not participating in this matter as a party, but as a participant, given its role as an advisor to the Commission.<sup>5</sup>

From its vantage point on the sidelines, not a party, not subject to Information Requests, not presenting any witnesses, not offering testimony, MOES offered this view of legislative intent in an Affidavit from Ingrid Bjorklund, MOES Site Permit Manager, who presented a view of “legislative intent, but neglected to specifically mention that in that 2007 Legislative session on which she opines, she was wind developer lobbyist, number 625!”<sup>6</sup>

In her Affidavit, Bjorklund offers the opinion on “legislative intent” based on statements made by Mike Bull, Commerce’s Assistant Commissioner for Renewable Energy working in the Governor’s office, a spokesman for the Executive branch! Bull also organized a “Minnesota wind Permitting Workgroup” populated by wind industry representatives and notably with no representation from Goodhue County. See attached Exhibit A, Affidavit of Bjorklund. A similar

---

<sup>4</sup> First Prehearing Order, p. 2.

<sup>5</sup> First Prehearing Order, p. 2, quoting Letter to ALJ from counsel for OES/EFP (Dec. 3, 2010).

<sup>6</sup> Online at the Campaign Finance Board: <http://www.cfboard.state.mn.us/lobby/adetail/a5971.html>

Association Represented	Association Number	Registration Date	Termination Date	Leg/Admin Metro	Designated Lobbyist
<a href="#">Outland Renewable Energy</a>	597	12/13/2007	3/17/2009		

Affidavit was filed by Deborah Pile, also a Commerce facility siting employee. See attached Exhibit B, Affidavit of Pile. Bjorklund states that:

Based on my review of the audio recordings for the conference committee meetings on SF 145, I conclude that committee members did not intend Minn. Stat. §216F.081 to apply to counties that did not undertake permitting responsibility of LWECS up to 25MW. It is my opinion that Committee members did not perceive a difference between combining or separating the provisions in Minn. Stat. §216F.08 and .081.

Based on my review of the legislative history, noted above, Mr. Bull accurately stated the intention of the stakeholder work groups as well as the likely intent of the statutory language that was finally enacted as Minn. Stat. §216F.081. that is, that Minn. Stat. §216F.081 was intended to require the Commission, in performing its duties to permit wind generation projects of 25 MW or larger located in counties that have chosen to undertake permitting responsibility for LWECS up to 25 MW, also to apply more stringent standards of counties (unless there is good cause not to apply them) when those counties have adopted the more stringent standards to apply to wind energy permitting applications up to 25 MW, for which the counties undertake permitting responsibility.

Exhibit A, p. 5. This statement was made on December 20, 2010. However, just 18 days before, on December 2, 2010, Bjorklund diametrically contradicts her argument made above when she declares that “the Goodhue Ordinance would be considered if Kenyon Wind applied for a new site permit” in the MOES Recommendation to the Commission regarding that project:

**Goodhue County Ordinance:** *Many commenters expressed that the standards under the Goodhue County ordinance should apply to this project. Goodhue County adopted a Wind Energy Conversion System Regulations (Article 18) on October 2, 2007, and amended its ordinance on October 5, 2010. The site permit for Kenyon Wind was issued July 18, 2007. The Goodhue County ordinance would be considered if Kenyon Wind applied for a new site permit because its existing permit expired or was revoked by the Commission. Alternatively, the Commission could choose to amend Kenyon Wind’s existing permit to include all or parts of the ordinance.*

Bjorklund goes on to say:

The site permit could also be amended to include more stringent standards adopted by Goodhue County in its ordinance.

MOES Recommendation, Kenyon Wind, p. 5-6.<sup>7</sup> MOES staff takes a similar position, arguing that the Applicant must comply with the Steele County standards in another docket.<sup>8</sup>

MOES' Deb Pile, in her Affidavit also based her opinion on statements by Mike Bull and that "Workgroup" proposal, and further claims she had advised counties that they must assume permitting of projects up to 25 MW and then turns 180 degrees, stating that:

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

Exhibit B, Affidavit of Pile, para. 15.

Upon receiving these Affidavits from Executive branch MOES staff/former lobbyist relying on an Executive branch Assistant Commissioner/Xcel Energy employee for "legislative history," Goodhue Wind Truth immediately filed Subpoena Requests for Ms. Bjorklund and Mr. Bull to testify regarding the assertions made. Exhibit C, Subpoena Request. This subpoena request was denied by ALJ Sheehy:

*I have reviewed the subpoena requests you filed last week seeking to compel the testimony of Ingrid Bjorklund and Michael Bull at the hearing in the above matter. I have two responses. First, I asked the parties to address, in post-hearing memoranda, the issue whether a county has authority to establish more stringent permitting standards only if it has assumed the responsibility to process applications and issue permits for LWECS with a combined nameplate capacity of less than 25 MW. See First Prehearing Order ¶13 (Dec. 8, 2010). This is a legal issue, not a factual issue for hearing in this case. The OES decision to file affidavits explaining the development of its position on this issue in advance of the hearing does not create a factual issue requiring testimony by either Ms. Bjorklund or Mr. Bull. Second, the affidavit filed by Ms. Bjorklund is based solely on her review of legislative materials that are available to the general public. You are free to review*

---

<sup>7</sup> Available online: [201012-57079-01](#) PUBLIC 06-1445 WS OES COMMENTS--AND RECOMMENDATIONS ON PROPOSED PERMIT AMENDMENT 12/02/2010

<sup>8</sup> PUC Docket IP-6839/WS-10-119, MOES EFP Response, p. 7 of 9.

*those materials at any time and to include similar legislative history in your post-hearing memorandum. Your request for the subpoenas, however is denied.*

Exhibit D, Subpoena Denial. Thus, the ALJ suggests that parties address an issue “in post-hearing memoranda” and the Commission’s “staff” in this matter, MOES, a non-party not subject to Information Requests and not submitting Testimony subject to cross-examination, submits prior to the hearing Affidavits asserting as facts “legislative intent,” including one where a wind lobbyist at the time of the legislation in question makes claims of “legislative intent” based on hearsay of a spokesman for the Governor and recommendations of a “Workgroup” which are accepted in this docket as indicative of “legislative intent” unchallenged and which is cited in the record of this proceeding!

As the ALJ notes, the language of the statute is unambiguous:

**216F.081 APPLICATION OF COUNTY STANDARDS.**

A county may adopt by ordinance standards for LWECS that are more stringent than standards in commission rules or in the commission's permit standards. The commission, in considering a permit application for LWECS in a county that has adopted more stringent standards, shall consider and apply those more stringent standards, unless the commission finds good cause not to apply the standards.

The unambiguous plain language of the statute states that the county has authority to enact more stringent standards, and that the Commission shall apply a county’s ordinance. And, as pointed out by Belle Creek in its post-hearing Brief, there is no requirement in the statute that counties take on permitting of 5-25MW projects for Minn. Stat. §216F.081 to apply. Statutory interpretation is not to be a contorted dance to achieve an absurd result. The plain meaning must be applied. State by Beaulieu v. RSJ, Inc., 552 N.W. 2d 695, 701 (Minn. 1996). The ALJ correctly held that the statute is unambiguous, and then proceeded to interpret it contrary to that plain language. As Belle Creek noted in its brief:

Overlooked is the simple fact that the A-2 amendment *did* substantively change the section on county authority, and it is the text of the amendment, not agency staff opinion as to the rationale behind it, that must control in any legitimate analysis of legislative history.

Belle Creek Brief, p. 25. The ALJ twisted the clear language and misinterpreted the plain language of the law, utilizing AWA Goodhue's and an industry lobbyist/agency staff interpretation that essentially rewrites not only legislative history but the statute itself. The ALJ went beyond the scope of the proceeding to come to this strained interpretation, and based the Recommendation upon this strained interpretation. This interpretation and the Recommendation are an error of law.

Not only is the statute unambiguous, the Goodhue County Ordinance is unambiguous in its statement that the standards in Article 18 are to be considered and applied by the PUC according to Minn. Stat. §216F.081. The plain language preface of the ordinance is the basis for its interpretation. See Mohler v. City of St. Louis Park, 643 N.W. 2d 623 (Minn. Ct. App. 2002); also c.f. Channel Outdoor Advertising, Inc. v. City of St. Paul, 675 N.W. 2d 343, 348 (Minn. Ct. App. 2004).

The plain language of the statute and the Goodhue County Ordinance must be upheld. The Ordinance states that it is to be considered and applied by the PUC, the Statute states that the PUC shall consider and apply the Ordinance, and the PUC's referral to OAH presumes that it shall be applied. There is no good cause to do otherwise.

### **C. ALJ CANNOT INVOKE STANDARDS THAT DO NOT EXIST**

Saving the best for last, the Recommendation is in error from the beginning, due to reliance on the fiction that the Commission has established general wind permit standards<sup>9</sup>, which it has not. It is undisputed that the Energy Act of 2007 mandated promulgation of rules,

---

<sup>9</sup> ALJ Recommendation, p. 3.

general permit standards, for the siting of wind turbines. It is undisputed that such rules were adopted for wind projects between 5 and 25MW. However, no rules have been promulgated, there are no standards, for projects over 25MW. Instead, has been permitting larger projects on a case-by-case basis.<sup>10</sup> Despite repeated references by the ALJ to “general permitting standards” and “established general wind permit standards,” there is not a single citation in the record or in the ALJ’s Recommendation to the “established general wind permit standards.”

In addition, the Commission, in its case-by-case permitting, has increased setbacks arbitrarily, with no cited basis for such increase, and has put specific language into the permit that it is **NOT** to be regarded as standards for future siting dockets:

*Adoption of this special condition is based on facts unique to this case and provides no precedent or foreshadowing regarding the size of the set back that the Commission may deem appropriate and reasonable to require in future dockets<sup>11</sup>.*

The Minnesota administrative rules prohibit adoption of rules not in compliance with the rulemaking chapter of the APA. See Minn. Stat. §14.05. The Administrative Law Judge may not invoke “general permit standards” that do not exist and which have not been promulgated as required under the Administrative Procedure Act.

Because there are no state standards, there is no conflict between state and county standards. Taking it the next logical step, the lack of state general permit standards provides additional basis to use the county standards, as there are no others to fall back on. The ALJ must instead reject the compilation of state siting practices as “standards” or “rules” and Recommend the Commission apply the legitimately adopted Goodhue County Ordinance.

---

<sup>10</sup> Ex. 21, Order, In the Matter of Establishment of General Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts, Docket No. E, G-999/M-07-1102.

<sup>11</sup> LWECS Site Permit for the Bent TreeWind Project Phase I, p. 17, Special Conditions, PUC Docket 08-573.

## **D. PUC ORDER POINTS**

The PUC's order was clear with three points that it referred to the Administrative Law Judge for record development and recommendation, but these three points were turned upside down and inside out in a Recommendation that has no logical flow, and in particular, which does not group the Commission's Order Points together.

### **i. ORDER POINT 1 – MORE STRINGENT STANDARDS**

*The ALJ assigned to this matter is requested to develop a record on every standard in Article 18 that is more stringent than what the Commission has heretofore applied to LWECS and make recommendations regarding each such standard whether the Commission should adopt it for Large Wind Energy Conversion Systems in Goodhue County. The Commission has identified two such standards in this Order (Section 4 and Section 6) but is not by this Order restricting the ALJ from developing the record and making recommendations regarding additional standards in Article 18 that upon further examination meet the “more stringent” qualification.*

PUC Referral Order, Order Point 1.

Parties to this docket were asked to develop a list of specific examples of where the Goodhue County Ordinance was more strict than state standards. This presumes that there are established state standards, yet there are none. The state adopted standards for 5-25MW<sup>12</sup>, and the state's docket on Public Health Effects of Wind Turbines is stalled and has been for over a year.<sup>13</sup> The ALJ's repeated references to “General Permit Standards” is misleading, and the assumption that there are established state standards is false. Each reference has no citation to established state standards, no party can produce such standards – they do not exist. This lack of state general permit standards for wind projects over 25MW is a fatal flaw in this Recommendation.

---

<sup>12</sup> In the Matter of Establishment of General Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts, Docket No. E,G-999/M-07-1102.

<sup>13</sup> PUC Docket 09-845, Public Health Impacts of Wind Turbines.

Despite this systemic legal and logical problem, the parties did develop a list of examples where the Goodhue Ordinance was more stringent than standards developed for 5-25MW projects, and these were reviewed. The Recommendation, unfortunately, has strewn them throughout the report. For ease of reference, they are listed in the specific Exceptions below by number, but all grouped together. Even reorganized, the underlying flaw remains, and has an impact on the analysis and result. It's quite simple -- where there are NO state standards for projects over 25MW, the Commission has no standards to fall back on. The only standards in this case are those of the County, and this is all the more reason to apply the County's Ordinance, good cause to apply it where there are no other standards.

**ii. ORDER POINT 2 – GOOD CAUSE**

*The ALJ assigned to this matter is requested to allow the parties to develop a factual record on the question of “good cause” as that term appears in Minn. Stat. § 216F.081 and to provide recommendations on whether, with respect to each standard in Article 18 identified in the course of her review as “more stringent” than what the Commission has heretofore applied to LWECS, there is “good cause” for the Commission to not apply the standard to siting LWECS in Goodhue County.*

PUC Referral Order, Order Point 2.

This is a question of “good cause” and not applicability. The Commission’s referral to “develop a factual record on the question of “good cause” ... and to provide a recommendation of whether “there is good cause for the Commission not to apply the standard” **presumes** that the standard is applicable. No Recommendation regarding applicability, statutory interpretation or legislative intent was requested, just whether there was “good cause” not to apply it.

Regarding “good cause,” the ALJ’s Recommendation states, without citation, that:

*The phrase is not defined in the statute, but the common legal meaning of "good cause" is a legally sufficient reason." A conclusion as to whether there is or is not good cause is a mixed question of fact (what the record shows) and law (whether the showing is sufficient)."*

Recommendation p. 11.

Basic rules of statutory construction instruct that words and phrases are to be construed according to their plain and ordinary meaning. *Baker v. Ploetz*, 616 N.W.2d 263, 268 (Minn. 2000). We need not, and must not, go through contortions to reach a result.

There is no good cause not to apply the Goodhue County Ordinance. An inquiry and recommendation regarding applicability is going beyond the Commissions narrow referral.

iii. **ORDER POINT 3 – EVIDENCE REGARDING HEALTH AND SAFETY**

*As the ALJ addresses the issues identified in the previous two sections, the ALJ is requested to include (but not limited to, by this Order) whether there is sufficient evidence regarding health and safety to support a 10 rotor diameter set-back for non-participating residents and the stray voltage requirements.*

PUC Referral Order, Order Point 3.

Regarding the PUC’s Order point 3, the question of “whether there is sufficient evidence regarding health and safety to support a 10 rotor diameter set-back for non-participating residents and the stray voltage requirements” goes beyond the Commission’s authority.

This framing is problematic, because the standard of review for adoption of a county ordinance is whether it is arbitrary and capricious, not “whether there is sufficient evidence regarding health and safety to support a 10 rotor diameter set-back for non-participating residents and the stray voltage requirement.”

County ordinances are adopted to protect the health, safety and welfare of the county’s residents and environment. There are specific procedures that must be followed to assure the result is not arbitrary and capricious, that there is notice and public participation, and that the County is deliberate in its actions. This point looks to be a burden shift, or more correctly, making this an issue of causation, expecting the county to scientifically evaluate and establish scientific basis to a standard beyond which a county responsible or accountable. **Passage of the**

**County Ordinance and its legitimacy is a matter of process, -- this is not a matter of causation requiring demonstration of scientific proof.**

**III. CONCLUSION**

The PUC's referral presumes that Minn. Stat. §216F.081 is applicable. The Commission's referral is narrow, requesting development of the record regarding difference between the Goodhue County Ordinance and state siting practices, whether there is "good cause" not to apply the County Ordinance, and whether there is sufficient evidence for a 10 RD setback and stray voltage testing. In making the Recommendation, the ALJ went beyond this narrow charge. Goodhue Wind Truth asks that the Commission reject the Recommendation of the Administrative Law Judge, adopt the Exceptions offered by Goodhue Wind Truth and the other intervenors, and apply the standards in the Goodhue Wind Ordinance, Article 18, to the AWA Goodhue project.

May 16, 2011



---

Carol A. Overland #254617  
Attorney for Goodhue Wind Truth  
OVERLAND LAW OFFICE  
P.O. Box 176  
Red Wing, MN 55066  
(612) 227-8638 [overland@redwing.net](mailto:overland@redwing.net)  
[www.legalelectric.org](http://www.legalelectric.org)  
[www.nocapx2020.com](http://www.nocapx2020.com)

# EXCEPTIONS OF GOODHUE WIND TRUTH

The organization of the ALJ's Recommendation was not in keeping with the referral of the Commission, and has been reorganized to more closely adhere to that referral. Each of the numbered paragraphs are below with the same number, underline and strike-out Exceptions within the paragraphs, moved into this more logical organization.

I. INTRODUCTION	
A. Representation .....	14
II. ISSUES FOR HEARING .....	16
III. STATUTES AND RULES .....	17
A. LWECS Siting Statutes .....	17
<u>FINDINGS OF FACT</u>	
A. The Applicant, Project and Procedural Status .....	20
B. Procedural Status .....	21
C. Other Parties .....	23
IV. PUC ORDER POINT 1 – MORE STRINGENT STANDARDS	
A. Setbacks from Property Lines .....	25
B. Setbacks from Neighboring Dwellings .....	27
C. Setbacks for Road .....	37
D. Setbacks for Other Rights of Way .....	38
E. Setbacks for Public Conservation Lands.....	39
F. Setbacks for Wetlands .....	40
G. Setbacks for Other Structures.....	43
H. Setbacks for Other Existing WECS and Internal Turbine Spacing.....	43
I. Setbacks for Bluffs.....	44
J. Discontinuation and Decommissioning.....	44
K. Stray Voltage Testing.....	45
L. Miscellaneous Sections.....	48
V. PUC ORDER POINT 2 – GOOD CAUSE.....	51
VI. PUC ORDER POINT 3 – EVIDENCE REGARDING HEALTH AND SAFETY TO SUPPORT THE 10-RD SETBACK.....	54
VII. MOTION TO STRIKE.....	59
<b>PROPOSED ORDER .....</b>	<b>61</b>

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE 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

**GOODHUE WIND TRUTH  
EXCEPTIONS TO  
FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS**

The paragraph numbering is that of the ALJ, rearranged below in logical order based on the Commission's three Order points in its referral.

There are large sections of white space, due to formatting problems as a WORD version of the Recommendation was not available.

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on March 15-17, 2011, at the Offices of the Minnesota Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota. The OAH record closed on April 8, 2011.

Todd J. Guerrero and Christina Brusven, Fredrickson & Byron, PA, 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402-1425, appeared for AWA Goodhue Wind, LLC (Applicant).

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared for the Department of Commerce, Office of Energy Security, Energy Facility Permitting Staff (Department or OES/EFP). OES/EFP did not appear as a party in this case; its participation was limited to the filing of comments and questioning of witnesses.'

Stephen Betcher, County Attorney, and Carol Lee, Assistant County Attorney, 454 West Sixth Street, Red Wing, MN 55066, appeared for Goodhue County.

Patrick J. Hynes, Strobel & Hanson, PA, 406 West Third Street, Suite 200, Red Wing, MN 55066, appeared for Belle Creek Township.

Carol Overland, Attorney at Law, P.O. Box 176, Red Wing, MN 55066, appeared for Goodhue Wind Truth.

Daniel S. Schleck, Mansfield Tanick & Cohen, PA, 1700 US Bank Plaza South, 220 South Sixth Street, Minneapolis, MN 55402-4511, appeared for the

## Coalition for Sensible Siting.<sup>2</sup>

<sup>1</sup> See Comments filed December 21, 2010.

<sup>2</sup> Mr. Schleck filed a Notice of Appearance indicating that he represented the City of Zumbrota, the City of Goodhue, and the Coalition for Sensible Siting. At the hearing Mr. Schleck clarified that he was appearing only on behalf of the Coalition for Sensible Siting. See Tr. 1 :12.

1

Commission staff members Tricia DeBleeckere, Bob Cupit, and Bret Eknes attended the hearing.

### IV. Issues for Hearing.

34. On October 21, 2010, approximately two weeks after the County adopted its amended wind ordinance, the Commission met to consider the site permit application. The Commission concluded that it could not satisfactorily resolve, on the basis of the record before it, all questions regarding the applicability of the County's ordinance, including whether there was good cause for the Commission not to apply any ordinance standards that are more stringent than the standards currently applied to LWECS by the Commission." The matter was referred to the Office of Administrative Hearings for a contested case proceeding to develop the record as follows:

~~-Development of a record on every standard in Article 18 of the Goodhue County Ordinances on Wind Energy Conversion Systems that is more stringent than what the Commission has heretofore applied to large wind energy conversion systems (LWECS). for the purpose of making recommendations regarding whether the standard should be adopted for LWECS in Goodhue County;~~

~~-Development of a record on the question of "good cause" as that term appears in Minn. Stat. § 216F.081, for the purpose of making recommendations on whether there is good cause for the~~

<sup>43</sup> Ex. 32. McNamara Direct at 2; Affidavit of Marie McNamara (Feb. 8, 2011). efiled in connection with Goodhue Wind Truth's Motion for Reconsideration (Feb. 11, 2011) (contains address); Ex. 3, Burdick Direct at Attachment B (contains turbine locations).

<sup>44</sup> Affidavit of Steve Groth (Feb. 8, 2011). efiled in connection with Goodhue Wind Truth's Motion for Reconsideration (Feb. 11, 2011) (contains property locations); Ex. 3. Burdick Direct at Attachment B (contains turbine locations).

<sup>45</sup> Ex. 24A at 935 (and 2503 and 5289) (Zumbrota Township); 1094-95 (Goodhue Township). <sup>46</sup> Site Permit Docket. Notice and Order for Hearing at 2 (Nov. 2, 2010).

~~Commission to not apply the standard to LWECS in Goodhue County;  
and~~

~~-Development of a record to determine whether there is sufficient evidence regarding health and safety to support two specific portions of~~

~~Article 18: the 10-rotor diameter setback for nonparticipating residents, contained in Section 4, and the stray voltage requirements, contained in Section 6,47~~

1. The ALJ assigned to this matter is requested to develop a record on every standard in Article 18 that is more stringent than what the Commission has heretofore applied to LWECS and make recommendations regarding each such standard whether the Commission should adopt it for Large Wind Energy Conversion Systems in Goodhue County. The Commission has identified two such standards in this Order (Section 4 and Section 6) but is not by this Order restricting the ALJ from developing the record and making recommendations regarding additional standards in Article 18 that upon further examination meet the “more stringent” qualification.

2. The ALJ assigned to this matter is requested to allow the parties to develop a factual record on the question of “good cause” as that term appears in Minn. Stat. § 216F.081 and to provide recommendations on whether, with respect to each standard in Article 18 identified in the course of her review as “more stringent” than what the Commission has heretofore applied to LWECS, there is “good cause” for the Commission to not apply the standard to siting LWECS in Goodhue County.

3. As the ALJ addresses the issues identified in the previous two sections, the ALJ is requested to include (but not limited to, by this Order) whether there is sufficient evidence regarding health and safety to support a 10 rotor diameter set-back for non-participating residents and the stray voltage requirements.

35. On November 5, 2010, the Commission deferred consideration of the application for a certificate of need, pending completion of the contested case in this docket."

## **I. Statutory Backgroundes and Rules.**

1. Wind energy developments are governed by the Minnesota Wind Siting Act, Minnesota Statutes Chapter 216F. The chapter defines a large wind energy conversion system (LWECS) as any combination of wind energy conversion systems with a combined nameplate capacity of 5 megawatts (5,000 kilowatts) or more. A small wind energy conversion system (SWECS) means any combination with combined nameplate capacity of less than 5 megawatts." Those projects under 25MW are also subject to the standards found in the Commission's Order "In The Matter of Establishment of General Permit Standards for the Siting of Wind Generation Projects Less Than 25 Megawatts, Order Establishing General Wind Permit Standards, Docket No. E,G-999/M-07-1102. It is the policy of the state to site LWECS in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources,"

2. No person may construct a LWECS without a site permit from the

Public Utilities Commission. A permit under Chapter 216F is the only site approval required for the location of an LWECS. The site permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances adopted by regional, county, local, and special purpose governments." Local governments may establish requirements for the siting and construction of SWECS.

3. In 2007, chapter 216F was amended by the Next Generation Energy Act of 2007. The amendments provided in relevant part that a county board may assume responsibility for processing applications for permits for LWECS with a combined nameplate capacity of less than 25 megawatts, if the board takes such action by resolution and provides written notice to the Public Utilities Commission." The legislature required the Commission to establish, by order, general permit standards (including property line setbacks) for LWECS under this section. The statute further provides that the order must consider existing and historic commission standards for wind permits issued by the commission. These general permit standards "shall apply to permits issued by counties and to permits issued by the commission for LWECS with a combined nameplate capacity of less than 25,000 kilowatts." The commission or a county

<sup>3</sup> Minn. Stat. § 21BF.01, subds. 2 & 3. <sup>4</sup> Minn. Stat. § 21BF.03.

<sup>5</sup> Minn. Stat. § 21BF.04.

<sup>6</sup> Minn. Stat. § 21BF.07.

<sup>7</sup> Minn. Stat. § 21BF.02(c). <sup>8</sup> Minn. Stat. § 21BF.08(a).

2

may grant a variance from a general permit standard if the variance is found to be in the public interest."

4. Included in the 2007 amendments was the following provision:

A county may adopt by ordinance standards for LWECS that are more stringent than standards in commission rules or in the commission's permit standards. The commission, in considering a permit application for LWECS in a county that has adopted more stringent standards, shall consider and apply those more stringent standards, unless the commission finds good cause not to apply the standards.'?

5. In response to these amendments, the Commission opened a docket to establish general wind permit standards that would be applicable to permits issued by counties and to permits issued by the commission for LWECS with a combined nameplate capacity of less than 25 megawatts- Noting in a letter to Commerce that there are no formal siting standards and instead an "implementation approach" has been used:

Commission staff and Department of Commerce Energy Facility Permitting staff have developed an implementation approach that relies on the Department's wind siting

expertise and the former EQB staff's role in development of the historic standards that currently support the Commission's wind siting decisions...<sup>14</sup>

-After notice and a comment period, the Commission issued an order establishing general wind turbine permit setbacks and standards for LWECS facilities under 25 MW permitted by counties pursuant to Minn. Stat. § 216F.03. However, although the legislature required the Commission to establish, by order, general permit standards (including property line setbacks) for LWECS, general permit standards have not been established and the Commission has yet to comply with the statute. As stated in the Order, these standards and setbacks maintain most of the Commission's established practice in siting LWECS on a case-by-case basis permit standards and setbacks that had been in effect for the previous 12 years, with some minor changes. Permits are issued on a case-by-case basis, with setbacks being increased arbitrarily, in some cases with specific language that this is not to be regarded as "standards" for future siting dockets:

Adoption of this special condition is based on facts unique to this case and provides no precedent or foreshadowing regarding the size of the set back that the Commission may deem appropriate and reasonable to require in future dockets.<sup>15</sup>

6. The Commission's *General Wind Permit Standards Order for the Siting of Wind Generation Projects Less than 25 Megawatts* contains setbacks and standards for LWECS that are permitted by counties under Minn. Stat. § 216F.03. Those standards apply only to those project under 25 MW.<sup>16</sup> are essentially the same as the permit standards the Commission had developed in other dockets and had previously applied to all LWECS, prior to the 2007 amendments."

7. As of January 2010, six counties had assumed responsibility to permit wind projects: Lyon, Murray, Freeborn, Lincoln, Stearns, and Meeker counties." As of January 2010, there were more than 1,400 wind turbines in Minnesota with a total nameplate capacity of more than 1,800 megawatts.<sup>17</sup>

B. As of January 2010, there were more than 1,400 wind turbines in Minnesota with a nameplate capacity of more than 1,800 megawatts. Of those

<sup>9</sup> Minn. Stat. § 216F.08(c). <sup>10</sup> Minn. Stat. s 216F.081

<sup>11</sup> *In the Matter of Establishment of General Permit Standards for the Siting of Wind Generation Projects*

<sup>14</sup> Letter from Burl Haar to Commissioner Glenn Wilson regarding Commerce assistance in rulemaking docket, September 20, 2007.

<sup>15</sup> LWECS Site Permit for the Bent Tree Wind Project Phase I, p. 17, Special Conditions. 08-573

<sup>16</sup> In the Matter of Establishment of General Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts, Order Establishing General Wind Permit Standards, Docket No. E.G-999/M-07-1102

<sup>17</sup> Ex. 24A at 503.

Less than 25 Megawatts. Docket No. E,G-999/M-07-1102, Order Establishing General Wind Permit Standards (Jan. 11,2008) (*General Wind Permit Standards Order*). For ease of reference, a copy of this Order and its attached Ex. A was received in evidence as Ex. 21.

<sup>12</sup> Ex. 21 at 3 and Attachment A. See also Ex. 24A at 514 (commission has issued permits standards developed in generic dockets and on a case by case basis in individual project dockets).

<sup>13</sup> Ex. 24A at 510, a powerpoint by MOES' Deb Pile.

3

Ag Preservation statute 17.80

turbines, approximately 1,058 were permitted by the MPUC, and 361 were permitted by local governments."

Based on all the files, records, and proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

#### II. The Applicant, Parties and Development of Record

9. The Applicant, AWA Goodhue, LLC, filed its initial siting application on October 24, 2008<sup>18</sup>. AWA Goodhue, LLC is the developer of a proposed 78 MW wind farm in Goodhue County. The project as proposed consists of 50 1.5- or 1.6-MW GE xle wind turbine generators, gravel access roads, an underground electrical collection system, two permanent meteorological towers, an operation and maintenance facility, two project substations, and step-up transformers at the base of each turbine. The expected cost to design and construct the project is \$179 million."

10. The Applicant owns the assets, including this project, of National Wind, LLC, a development company headquartered in Minneapolis.<sup>16</sup> American Wind Alliance, LLC, a Texas corporation, owns the Applicant; Mesa Power Group, a Texas corporation owns American Wind Alliance; and Thomas Boone Pickens, Jr., a Texas resident, owns Mesa Power Group. Upon commercial operation, the Applicant will be owned jointly by American Wind Alliance (99%), a Texas corporation, and Ventem Energy, LLC, a group of about 20 Minnesota investors (one percent), whose identities have not been disclosed."<sup>19</sup>

<sup>18</sup> In the Matter of the Application of AWA Goodhue Wind, LLC, for a Large Wind Energy Conversion System Site Permit for the 78 Megawatt Goodhue Wind Project in Goodhue County, Docket No. IP-6701/WS-08-1233 (Site Permit Docket).

<sup>19</sup> Direct Testimony of Mark Ward, p. 4, Tr. 2 (Ward).

11. The project's draft permit boundary includes 32,684 acres in Belle Creek, Minneola, Goodhue, Vasa, and Zumbrota Townships in Goodhue County."

12. On October 15, 2009, the Applicant filed an application for a certificate of need with the Commission.<sup>14</sup>

13. On October 19, 2009, the Applicant filed an amended application for a site permit with the Commission.<sup>15</sup>

14. In October 2009, the Applicant entered into two Power Purchase Agreements (PPAs) with Xcel Energy representing purchases of the full expected output of the project." On April 28, 2010, the Commission approved Xcel Energy's petitions for approval of these PPAs.<sup>16</sup>

<sup>14</sup> Ex. 24A at 503,505.

<sup>15</sup> Ex. 1, Ward Direct at 3-4; Ex. 2, Robertson Direct at 2. <sup>16</sup> Ex. 3, Burdick Direct at 1.

<sup>17</sup> Ex. 1, Ward Direct at 4; Tr. 2:68-69 (Ward). <sup>18</sup> Ex. 3, Burdick Direct at 2-3.

<sup>19</sup> *In the Matter of the Application of A WA Goodhue Wind, LLC, for a Certificate of Need for a 78- Megawatt Wind Project and Associated Facilities in Goodhue County*, Docket No. IP-6701!CN- 09-1186 (*Certificate of Need Docket*).

<sup>20</sup> *In the Matter of the Application of AWA Goodhue Wind, LLC, for a Large Wind Energy Conversion System Site Permit for the 78 Megawatt Goodhue Wind Project in Goodhue County*, Docket No. IP-6701/WS-08-1233 (*Site Permit Docket*).

<sup>21</sup> Ex. 1, Ward Direct at 3.

<sup>22</sup> *In the Matter of Northern States Power Company's Request for Approval of Power Purchase Agreements with Goodhue Wind, LLC*, Docket Nos. E-002/M-09-1349, E-002/M-09-1350, Order

4

15. On May 3, 2010, the Commission issued an order denying Goodhue Wind Truth's request for a contested case hearing in this docket, concluding that there were no material issues of fact that would require a contested case hearing. The Commission expanded the scope of the public hearings in the certificate of need docket, however, to include siting and permitting issues. The Commission also approved for distribution and comment a draft site permit.<sup>23</sup>

16. Public hearings were held in Goodhue, Minnesota on July 21-22,2010. The hearings were well attended, and a summary of public testimony was provided to the Commission in September 2010, incorporated here by reference.<sup>4</sup>

17. The Applicant has negotiated easements, leases, and participation agreements to site 50 turbines with approximately 200 persons who own land in the project area, including multiple owners of single parcels, and counting each parcel

owner/s for each parcel.<sup>20</sup> Siting of 50 turbines requires far less than 200 individual parcels of land, but Applicants could not or would not state the specific numbers<sup>21</sup>. Less than half the land in the project footprint has been signed, which is not efficient use of resources. Through these agreements, approximately 12,000 acres of land are available to site wind turbines and provide setbacks of 1,500 feet from non-participating residences and a minimum of ~~1,000~~ 1,500 feet for participants."

18. At present, the Applicant proposes to site all the turbines in Belle Creek and Minneola Townships. While the overall housing density is not significantly different on a countywide basis, the distribution of turbines and population is different, with Belle Creek township more densely populated. These townships are not significantly different, in terms of housing density, than townships that are hosting other wind turbine projects in Dodge and Mower Counties.<sup>26</sup>

19. The Applicant has invested approximately \$7.5 million in acquisition and development costs for the project.<sup>27</sup> The turbine deposit of approximately \$/ million was paid by AWA and will not be lost<sup>22</sup>.

20. The Applicant anticipates that, based on and assuming unverified production estimates, the project will generate \$768,000 per year to participating landowners, or about \$20 million over the life of the Power Purchase Agreements negotiated with Xcel Energy.<sup>28</sup> In addition, the Applicant anticipates that local governments (the County and townships) would receive \$302,000 per year in energy production tax payments, or about \$6 million over the life of the Power Purchase Agreements.<sup>29</sup> For each dollar received, the local governments will lose an equal amount in state funding.

Approving Power Purchase Agreements, Approving Contract Amendments, and Requiring Further Filings (Apr. 28, 2010) (copy included in Ex. 24A at 138-47).

<sup>23</sup> *Certificate of Need Docket* and *Site Permit Docket*, Order Approving Distribution of Draft Site Permit and Denying Contested Case (May 3, 2010).

<sup>24</sup> *Certificate of Need Docket* and *Site Permit Docket*, Summary of Public Testimony (Sept. 7, 2010).

<sup>25</sup> Ex. 3, Burdick Direct at 2-3. <sup>26</sup> Ex. 3, Burdick Direct at 20. <sup>27</sup> Ex. 2, Robertson Direct at 2. <sup>28</sup> Ex. 2, Robertson Direct at 9. <sup>29</sup> Ex. 2, Robertson Direct at 9.

5

21. On October 20, 2010, OES/EFP recommended approval of the site

<sup>20</sup> Transcript, Vol. 3, p. 42.

<sup>21</sup> Burdick in Ex. 3 Burdick Cross at 42 lines 9-15 and continuing through page 44.

<sup>22</sup> Ex. 2, Robertson at 2, Tr. 1, Testimony of Robertson.

permit application with conditions. The proposed site permit was attached to its recommendation.<sup>30</sup>

### III. Other Parties.

22. Goodhue County is an intervenor with all rights and responsibilities of a party. Goodhue County is located approximately one hour southeast of the metropolitan Twin Cities area. It is bordered generally by Dakota County on the north, Dodge and Olmsted Counties on the south, Rice County on the west, and Wabasha County and the Mississippi River on the east. It has approximately 46,000 residents."

23. The land within the project boundary is zoned under a variety of different agricultural zoning classifications, including non-farm residences."

24. The Goodhue County Comprehensive Plan explicitly supports the development of "innovative industrial agricultural" land uses such as ethanol production and wind generation, within the parameters of the County Ordinances.<sup>33</sup>

25. The County Board passed a resolution supporting the "Goodhue Wind Energy Project" project as a community-based energy development project, without any supporting documentation of C-BED status.<sup>34</sup> Since that time, the footprint, size, and ownership of the project has changed. This C-BED resolution was for the project as originally presented by National Wind, prior to sale to AWA, Mesa Power and/or AWA Goodhue, at which time the ownership and structure of the project has changed<sup>23</sup>. The County Resolution is regarding a 39 turbine project owned by a Minnesota limited liability company organized by Minnesota Residents.

26. The County negotiated a Development Agreement with the Applicant that addresses the Applicant's obligations to comply with the State Building Code, obtain building permits, repair any damage to roads caused by construction traffic, restore roads to preconstruction surface condition, repair any damage to underground drainage systems, and pay all reasonable costs incurred by the County in connection with the project. The negotiations were completed and the County Board approved it on October 5, 2010, but the Development Agreement has not been executed." Environmental review of this project has not been completed or declared adequate by the Commission.

27. On October 5, 2010, Goodhue County adopted amendments to Article 18 of its zoning ordinance for wind projects 5 MW or less." ~~The County did not assume responsibility to process applications or permit LWEGS.~~ In section 1, the ordinance provides:

This ordinance is established to regulate the installation and operation of Wind Energy Conversion Systems (WECS) within

---

<sup>23</sup> Ex. 1, Ward Direct, p. 4.

<sup>30</sup> *Site Permit Docket*, Comments and Recommendations of the Minnesota Office of Energy Security Energy Facility Permitting Staff (Oct. 13,2010); Supplemental Comments and Recommendations (Oct. 20, 2010). These documents were re-filed as Attachments 2 and 3 to OES Comments filed on December 20,2010.

<sup>31</sup> [http://www.co.goodhue.mn.us/visitors/about\\_ghc.aspx](http://www.co.goodhue.mn.us/visitors/about_ghc.aspx).

<sup>32</sup> Tr. 1 :180-81 (Burdick). See *also* Ex. 3, Burdick Direct at 3 & Attachment 3A. <sup>33</sup> Ex. 24A at 881. See *also* Tr. 2:314-15 (Hanni).

33. Tr.3B, p. 81-82 (Wozniak).

<sup>34</sup> Ex. 24A at 143; Tr. 1 :54.

<sup>35</sup> Ex. 1, Ward Direct at Attachment B; Ex. 3, Burdick Direct at 23. <sup>36</sup> Ex. 24B.

6

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. For LWECS, the county does not assume regulatory responsibility or permit authority under MS 216F.OB, but any standards more stringent than those of the MPUC are to be considered and applied to LWECS per MS 216F.OB1.37

2B. The ordinance has no separate standards that specifically regulate LWECS. The setback provisions for commercial WECS, which are defined as "a WECS of 1 megawatt to 5 megawatts in total name plate generating capacity," include setbacks of 750 feet from participating dwellings and ten rotor-diameters (RD) from non-participating dwellings, unless an owner has agreed to a reduced setback (in no event less than 750 feet).<sup>38</sup> The ordinance also contains provisions requiring the application for a commercial WECS to include offers of two pre-construction stray voltage tests at all registered feedlots within the proposed project boundary and within one mile of the proposed project.<sup>39</sup>

29. The City of Goodhue, which has a population of approximately 925 people, and the City of Zumbrota intervened in this matter but did not participate in the contested case hearing. On August 12, 2009, the Goodhue City Council passed a resolution calling for a two-mile setback 'from the city of Goodhue "to prevent any Large Wind Energy Conversion System (LWECS) of being constructed."? On \_\_\_\_\_, the City of Zumbrota passed a resolution calling for a two-mile setback from the City of Zumbrota.

30. Belle Creek Township is an intervenor with all rights and responsibilities of a party. Belle Creek Township is an agricultural community of fewer than 450 people within Goodhue County." The township board has held about one dozen meetings to discuss the project. Approximately 40-50 people have consistently attended these meetings to oppose the project.<sup>42</sup>

31. Goodhue Wind Truth is an intervenor with all rights and responsibilities of a party. Belle Creek Township. Goodhue Wind Truth is an informal association that is not legally organized and has no membership other than Marie and Bruce McNamara, who live in section 11 within the project area. The turbine site proposed to be closest to their residence address appears to be at least approximately one-half mile away. They

use the name Goodhue Wind Truth for purposes of providing information regarding this project and other wind projects generally. They have established a website, bought newspaper advertisements and billboards, printed flyers, and hosted meetings in

<sup>37</sup> Ex. 248, Art. 18, § 1.

<sup>38</sup> Ex. 248, Art. 18, § 2, subd. 5; § 4, subd. 1.

<sup>39</sup> Ex. 248, Art. 18, § 3, subd. 2 G; § 6, subds. 1-3.

<sup>40</sup> Ex. 24A at 448. The same document appears at 451, 855, and 1194. <sup>41</sup> Ex. 31, Ryan Direct at 2.

<sup>42</sup> Ex. 31, Ryan Direct at 4.

7

the community regarding county and state permitting issues for wind development. <sup>43</sup>

32. The Coalition for Sensible Siting is an intervenor with all rights and responsibilities of a party. The Coalition for Sensible Siting is organized as a non-profit corporation in Minnesota to provide facts and information on wind energy projects to the public. Steve Groth and Ann Buck are members of the Board of Directors. Steve Groth lives-owns and operates a business in Zumbrota, outside and lives at 14601 Co. 50 Blvd., Goodhue, MN 55027, within the project area. The closest turbine would be sited approximately 1,500 feet north of his home, with three turbine sites on the neighboring property, owned by Mark Vieths. Ann Buck owns rental property in section 24 within the project area, and their residence is 37298 180<sup>th</sup> Ave. Goodhue, MN 55027, Goodhue Township, section 19, within the footprint. The turbine site proposed to be closest to her property appears to be about three-quarters of a mile away. The Coalition for Sensible Siting has no members or shareholders."

33. Goodhue Township and Zumbrota Township are not parties in this proceeding, but passed resolutions on March 9, 2010, providing that LWECS could be sited no closer than one-half mile from non-participating residences." The resolutions were based on the "possible health and safety effects" associated with LWECS. Neither Goodhue Township nor Zumbrota Township petitioned to intervene in this matter, nor did they participate in the hearing.

## PUC ORDER POINT 1 – MORE STRINGENT STANDARDS

### VI. Setbacks from Property Lines.

48. The County's ordinance in section 4, subdivision 1, provides for a property line setback for commercial WECS of "3 RD Non-prevailing and 5 RD Prevailing." It further provides that these setbacks shall be measured horizontally from the tower base. Prevailing wind is defined as the azimuth between 290 degrees to 30 degrees and between 130 degrees and 230 degrees.

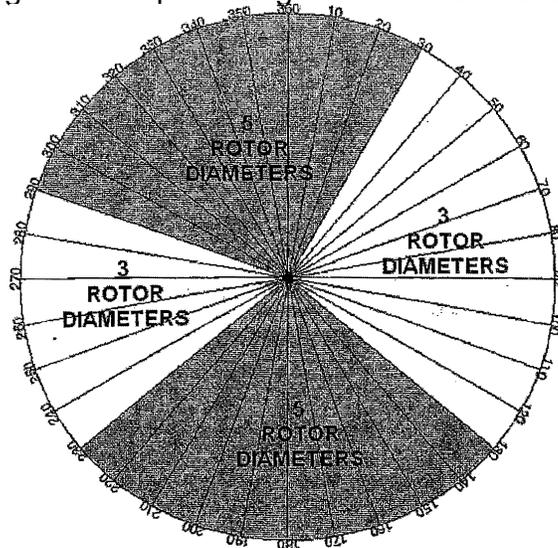
<sup>52</sup> Minn. Stat. § 645.16.

<sup>53</sup> OES Comments (Dec. 20, 2010), Attachments 4 and 5 (Affidavits of D. Pile and I. Bjorklund). <sup>54</sup> Black's Law Dictionary (9<sup>th</sup> ed. 2009).

<sup>55</sup> See *Averbeck v. State*, 791 N.W.2d 559, 561 (Minn. App. 2010).

Non-prevailing wind is defined as the azimuth between 30 degrees and 130 degrees and between 230 degrees and 290 degrees.<sup>56</sup>

49. The County's witnesses did not recall any discussion of the definition of prevailing wind in the meetings held in connection with adopting the ordinance." The definition of prevailing wind and non-prevailing wind in the County ordinance was taken from a similar ordinance provision adopted in Nicollet County.<sup>58</sup> The Nicollet County ordinance contains the following depiction of the manner in which prevailing and non-prevailing winds are defined.<sup>59</sup>



50. The Commission's general wind permit standards do not reference setbacks from property lines, but provide instead that wind turbine towers shall not be placed less than 5 RD from all boundaries of a developer's site control area (including wind and land rights) on the predominant wind axis, which is typically north-south; and 3 RD on the secondary wind axis (typically east-west). This setback applies to all parcels for which the permittee does not control land

<sup>56</sup> Ex. 24B, Art. 18, § 4, subd. 1.

<sup>57</sup> Tr. 2:313-14 (Hanni); Tr. 3B:17 (Wozniak)

<sup>58</sup> Tr. 3B:12 (Wozniak); Nicollet County Wind Energy Conversion Systems Ordinance § 801.1 ~adopted Aug. 11, 2009).

<sup>9</sup> Nicollet County Wind Energy Conversion Systems Ordinance, Appendix A.

and wind rights, including all public lands." This standard is intended to protect the wind access rights of non-participating property owners and to minimize the effects of wind turbine-induced turbulence downwind."

51. The County ordinance defines two 100° arcs for the prevailing wind direction, whereas the Commission's general wind permit standards allow an applicant to identify the predominant wind axis based on actual wind data obtained on the project site.<sup>62</sup>

52. The Applicant used wind data measured at meteorological towers in Clarks Grove<sup>24</sup>, Minnesota for the Bent Tree project, as data from met towers built on the site is being collected and is not yet available. Clarks Grove data was used to determine that the wind blows most often in the project area from the West/Northwest along a directional line of 300 degrees.<sup>63</sup>

53. Because the County ordinance defines prevailing wind direction in two 100° arcs, the 5 RD setback in the ordinance would apply to more than half of the compass rose. The application of this setback would preclude placement of 35 of the 50 turbines sited in the project area."

~~54. — To the extent that the ordinance is intended to protect the wind access rights of non-participating property owners, the manner in which prevailing wind is defined in the ordinance is both overly broad and less accurate than the definition used by the Commission. The ordinance uses a broadly defined proxy measurement rather than actual data to define prevailing wind direction, and it functions to greatly reduce the amount of land available for siting turbines. There is no evidence in the record to suggest that a setback of this magnitude is necessary to protect wind access rights of non-participating property owners.~~

~~55. — The Administrative Law Judge concludes there is good cause not to apply this provision of the ordinance to the project.~~

## **VII. Setbacks from Neighboring Dwellings.**

56. The County's ordinance provision for a commercial WECS specifies a 750-foot setback from participating dwellings and a 10 RD setback for nonparticipating dwellings, unless the owner agrees to a lesser setback. No setback may be less than 750 feet.<sup>65</sup> The ordinance further provides that the setback for dwellings, schools, churches, health care facilities, and campgrounds shall be

<sup>24</sup> P. 5, Amended Application, Oct. 2009.

<sup>60</sup> Ex. 21, Attachment A at 8.

<sup>61</sup> OES Comments (Dec. 20, 2010), Attachment 3 at 3. <sup>62</sup> Ex. 3, Burdick Direct at 7.

<sup>63</sup> Ex. 3, Burdick Direct at 7-8.

<sup>64</sup> Ex. 3, Burdick Direct at 8-9 & Ex. 3D (comparing setback compliance under the Commission's standard and the County ordinance).

<sup>65</sup> Ex. 24B, Art. 18, 4. §

13

reciprocal unless the owner or authorized agent signs a letter of understanding waiving this setback, but no less than a 750 foot setback"

57. The 10 RD setback in the ordinance was intended to function in lieu of more specific performance standards governing noise and shadow flicker.<sup>67</sup> The County acknowledged that the effects of flicker and noise generated by wind towers were difficult to ascertain and regulate:

It would be a matter of determining what level of burden on quiet enjoyment of neighboring properties would be reasonably acceptable. If we chose a decibel level or the number of hours of flicker, we would also have had to determine how and by whom these limits would be measured, how often, under what weather conditions and how costs of measurement would be paid.

Based upon staffing and financial resources, in addition to the logistical realities, the County Board chose to eliminate noise and flicker measurement issues by increasing the setback of towers from non-participating neighbors. The idea being that a greater distance would eliminate the need for noise or flicker limitations. We chose a, sliding scale of a 10 rotor diameter setback instead of a specific distance setback. The purpose behind this decision was that the size of the tower would determine the setback distance. For instance a shorter tower would have less of a noise or flicker impact and could be sited closer to dwellings.<sup>68</sup>

58. The County also asserts that:

Recognizing the challenge of administering various performance standards for regulating such impacts as noise or shadow flicker the County Board settled on a setback from non-participating dwellings of 10 rotor diameters as a rational standard that would better protect the quality of life of County residents. A lesser setback of a minimum of 750' plus compliance with State Noise Standards included in the revised ordinance was intended to allow more flexibility in locating wind turbines in proximity to the dwellings of participating property owners or non-participating property

<sup>66</sup> Ex. 24B, Art. 18, § 4. <sup>67</sup> Tr. 2:323-24 (Hanni).

<sup>68</sup> Ex. 24, Hanni Rebuttal at 2.

owners who may be willing to negotiate a setback of less than 10 rotor diameters with a Wind Energy Developer."

59. In a portion of the ordinance relating to procedures (as opposed to setbacks), the ordinance provides for negotiation to comply with the World Health Organization guidelines:

The County may, at its discretion, require a Development Agreement to address specific technical procedures which may include but are not limited to: road use and repair, telephone line repair, site specific issues, payment in lieu of taxes, other financial securities, or real property value protection plans. The County may negotiate with applicants to limit night time noise to a limit of an annual average of 40 decibels (dBA). corresponding to the sound from a quiet street in a residential area (World Health Organization night noise guidelines for Europe)."

60. The Commission's general wind permit standards require that turbines must be set back at least 500 feet from all-homes, plus whatever additional distance is necessary to meet state noise standards." In siting wind turbines, the setback distance necessary to comply with this standard is calculated based on site layout and turbine for each residential receiver. Typically, a setback of between 750 and 1,500 feet is required to meet this standard, depending on turbine model, layout, and other site-specific conditions." (no citation)

61. The Applicant has proposed to site turbines using a setback of 1,500 feet from the dwellings of non-participants and a minimum of 1,000, 1,500 feet for participating landowners under their contract. The OES recommended these setbacks as permit conditions without basis, without either scientific evidence or peer-reviewed studies to support those setbacks.<sup>3</sup>

<sup>69</sup> Ex. 27, Wozniak Rebuttal at 5. Although the setback provisions in section 4 make no reference to state noise standards, a different part of the ordinance provides that all WECS shall comply with State of Minnesota Noise Standards. See Ex. 24B, Art. 18, § 9, subd. 1.

<sup>70</sup> Ex. 24 B, Art. 18, § 3, subd. 4.

<sup>71</sup> Ex. 21, Attachment A at 8.

<sup>72</sup> Ex. 21, Attachment A at 8; Ex. 6, Casey Direct at 3.

<sup>73</sup> OES Comments (Dec. 20, 2010), Attachment 2 (Comments and Recommendations of the Minnesota Office of Energy Security, Energy Facility Permitting Staff dated Oct. 13, 2010); Attachment 3 (Supplemental Comments dated Oct. 20, 2010).

**A. State Noise Standards.**

62. Pursuant to Minn. Stat. § 116.07, the Minnesota Pollution Control Agency (MPCA) was charged with the responsibility to adopt standards describing the maximum levels of noise that may occur in the outdoor atmosphere. The statute provides, in relevant part, that:

[s]uch noise standards shall be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure which are more stringent than those set by the Pollution Control Agency?<sup>4</sup>

63. The noise standards for all outdoor noise are established in Minn. R. Chapter 7030. The MPCA's nighttime noise standard in residential areas is 50 dB(A) at L50, which means that noise levels cannot exceed 50 dB(A) more than 50% of the time during one hour.<sup>75</sup> Only "A" weighted sound is measured<sup>25</sup>. This exposure is based on measurements to be made outdoors, pursuant to rules specifying equipment specifications, calibration, measurement procedures, and data documentation."

64. The rule setting this standard further provides:

These standards describe the limiting levels of sound established on the basis of present knowledge for the preservation of public health and welfare. These standards are consistent with speech, sleep, annoyance, and hearing conservation requirements for receivers within areas grouped according to land activities by the noise area classification (NAC) system established [in another rule part].<sup>77</sup>

65. According to the MPCA, the decibel levels of common noise sources are as follows: <sup>8</sup> .

140 130 120 110 100  
90 80 70 60 50 40 30 20

Jet engine (at 25 meters)  
Jet aircraft (at 100 meters)  
Rock concert  
Pneumatic chipper (at one meter) Jackhammer (at one meter)  
Chainsaw, lawnmower (at one meter) Heavy truck traffic  
Business office, vacuum cleaner Conversational speech, typical TV volume Library  
Bedroom

---

<sup>25</sup> Id.

Secluded woods  
Whisper

66. The MPCA regulates noise from specific sources, without regard to the level of background noise. When the distance from a point source of sound is doubled, the sound level decreases by six decibels. ~~For example, a sound that is measured at 60 dB(A) from 50 feet away is measured at 48 dB(A) from 200~~

<sup>74</sup> Minn. Stat. § 116.07.

<sup>75</sup> Minn. R. 7030.0040, subp. 2.

<sup>76</sup> Minn. R. 7060.0060, subps. 1-5.

<sup>77</sup> Minn. R. 7030.0040, subp. 1.

<sup>76</sup> Ex. 24A at 2599, 2602.

16

~~feet away.~~ To determine the cumulative impact of two sources of noise at the same level, if they are equidistant and at fixed locations, the decibel level would increase by three.<sup>79</sup> If the sources of sound are more than 10 dB apart, there is no incremental increase in decibel level, because the louder noise predominates; and when sources of noise are less than 10 dB apart, the magnitude of increase in decibel level decreases from 3 dB down to zero."

67. Accordingly, sound levels from two or more sources cannot be arithmetically added together to determine the overall sound level. Existing ambient noise levels should not be added to noise produced by a turbine to determine the level of noise at a receptor from all sources.

68. A change in decibel level corresponds to a perceived change in loudness as follows:<sup>81</sup>

- +/- 1 dB(A) ..... Not noticeable
- +/- 3 dB(A) ..... Threshold of perception
- +/- 5 dB(A) ..... Noticeable change
- +/- 10 dB(A) ..... Twice (or half) as loud
- +/- 20 dB(A) ..... Four times (or one-fourth) as loud

69. The human ear cannot hear lower frequencies as well as higher frequencies. instead, lower frequencies are felt, and not heard. The A-weighting scale is used to duplicate the sensitivity of the human ear. At 100 Hertz, the A-weighting scale filters out approximately 20 dB from an incoming signal before it is combined with levels from other frequency ranges to produce an A-weighted sound level. As above, that 20 dB represents sound four times as loud that is filtered out. The C-weighting scale represents actual sound pressure as it is received by a sound level meter." State standards do not utilize a C weighted scale.

70. The noise level audible in any dwelling will depend on the distance from a noise source and the attenuation provided by the surrounding environment (atmosphere, terrain, construction type and insulation of the dwelling).<sup>83</sup>

## **B. Applicant's Noise Study.**

71. Based on the manufacturer's specifications for the turbines proposed for use in this project and the assumptions used in modeling, a setback of 750 feet for one turbine would meet MPCA noise standards. In this case, because multiple turbines could potentially impact a residence, the Applicant conducted a sound modeling study in June

<sup>79</sup> Ex. 24A at 2599, 2602-03.

<sup>80</sup> Ex. 6, Casey Direct at 3-4; Tr. 2:213-20 (Casey). <sup>81</sup> Ex. 24A at 2605; see also Testimony of Rick James and Exhibits, Ex. 21, Notebook 2.

<sup>82</sup> Ex. 24A at 2605.

<sup>83</sup> Ex. 24A at 2601.

17

2010 to determine the maximum sound level from the cumulative effect of all proposed turbines.

72. The Applicant's study showed that existing ambient noise levels in the project area ranged from 33 to 52 dB(A) for hourly median noise. Nighttime noise in the quietest locations (away from traffic areas, near residences and farm buildings) ranged from 33 to 43 dB(A) in Location 1 and ranged from 35 to 45 dB(A) in Location 2. These results are not consistent with noise levels measured in rural settings with in-high quality wind resources the AWA Goodhue project footprint, as completed by Rick James, INCE, on July 21 and 22, 2010.<sup>P</sup> Ex. 21, Additional Testimony of Rick James, Notebook 2.

73. The study used acoustic analysis software called Cadna-A to calculate noise levels from the proposed wind turbines. This software incorporates internationally accepted acoustical standards. In modeling the noise produced by wind turbines, the study used conservative assumptions with regard to terrain (flat), level of absorption provided by agricultural fields (70%), and wind (assumed all turbines were operating simultaneously at their highest rated operating speed). The average modeled level of noise from wind turbines, based on these assumptions, was 31 dBA; the median modeled level was 32 dBA; and the maximum modeled level was 43 dBA.<sup>85</sup> The average and median noise levels calculated for the turbines are lower than the existing ambient sound conditions measured in the noise study. The maximum noise level calculated for the turbines at any residence is 7 dBA below the MPCA L50 noise limit.<sup>86</sup>

74. The study results demonstrate-claim that all of the wind turbine sites proposed by the Applicant are located sufficiently far from dwellings to meet the IVIPCA noise standards." The closest distance between an existing home and a proposed turbine in this project is 1,152 ft from the home of a participant."<sup>87</sup>

## Goodhue Wind Truth's Noise Study

75. Rick James, INCE, filed Direct Testimony and testified in person before ALJ Lipman, where Applicant AWA Goodhue had opportunity to cross-examine and submit oral rebuttal. This testimony was included in exhibits filed by both Goodhue Wind Truth<sup>26</sup> and Goodhue County<sup>27</sup>.

76. James' testimony had several primary points. First, that setbacks of 1,500 feet are inadequate because wind turbine noise is distinctively annoying, causing adverse health impacts from sleep disturbances and vestibular disturbances from infra and low frequency sound. Second, that background levels submitted do not adequately define background sound levels, and include a "wind noise" component resulting in a biased assessment. Third, computer model estimates of operational sound levels understate the impact of turbines on the community. Fourth, AWA Goodhue presents misleading information contrary to expert understanding of thresholds of perception and mechanisms whereby perception occurs.

77. James' conclusion is that wind turbine noise emissions will result in sleep disturbance for a significant fraction of those who live within a mile from turbines and that chronic sleep disturbance results in serious health effects:

*[S]litting criteria more lenient than those recommended by WHO's 40 dBA limit for avoiding health risks... will result in a high level of community complaints of both noise pollution and nuisance. In addition, there is mounting evidence that for the more sensitive members of your community, especially children under six, people with pre-existing medical conditions, particularly diseases of the vestibular system, the organs of balance, and seniors will be likely to experience serious health risks.*

78. On July 20-21, 2010, James' conducted background sound level testing, finding a range of levels:

---

<sup>26</sup> Ex. 32, Mcnamara Direct, Exhibit Notebook 2, Direct Testimony of Rick James, INCE, and Exhibits.

<sup>27</sup> Exhibit 24.

The testing by James indicates that the modeling by Applicants is skewed due to use of incorrect assumptions. Expected noise levels are higher than the Applicants study predicts. Ex. 21, Additional testimony of Rick James, INCE, Notebook 2.

**C. Applicant's Shadow Flicker Study.**

75. Shadow flicker is the alternating changes in light intensity caused

by moving rotor blades at a given stationary location, such as the window of a home. In order for shadow flicker to occur, three conditions must be met: the sun must be shining, with no clouds obscuring the sun; the rotor blades must be spinning and be located between the receptor and the sun; and the receptor must be sufficiently close to the turbine to be able to distinguish a shadow created by the turbine. The intensity and frequency of flicker at a given receptor are determined by factors such as the sun angle and sun path, turbine and receptor locations, cloud cover and degree of visibility, wind direction, wind speed, nearby obstacles, and local topography."

<sup>84</sup> Ex. 6, Casey Direct, Attachment A at 8, 12 & 13. <sup>85</sup> *Id.*, Attachment A at 10-11.

<sup>86</sup> Ex. 6, Casey Direct at 5-6.

<sup>87</sup> *Id.*, Attachment A at 11.

<sup>88</sup> Ex. 6, Casey Direct at 6.

<sup>89</sup> Ex. 7, Zilka Direct at 2-3 & Attachment A.

76. Applicants were present at Goodhue County Board, Planning Commission, and Planning Commission Subcommittee, and submitted only one shadow flicker map for the Ordinance record. For this siting docket and contested case proceeding, HDR Engineering prepared a shadow flicker analysis for the Applicant using the most recent actual coordinates of homes and turbines, digital elevation data, and physical characteristics of the turbines proposed for this project. The model incorporates sunshine probability data from the National Weather Service and wind direction data from meteorological towers in the project area. It makes conservative assumptions that the turbines will operate 100 percent of the time; that receptors can be impacted from all directions; and that no shading or screening from buildings or vegetative cover will take place.<sup>90</sup>

77. The study modeled actual expected flicker based on these assumptions for the 289 homes located within 6,562 feet of a project turbine. The following results were obtained:

Expected Hours\Yr	0-10	10-20	20-30	30-40
No. of Receptors	69	179	30	74
% of Receptors"	23.9	61.9	10.4	
	2.4	1.4		

78. Based on these results, 278 homes (96.2%) are expected to experience less than 20 hours of shadow flicker- per year; 248 (85.8%) are expected to experience less than 10 hours of shadow flicker per year. Of the 11 homes that are expected to experience more than 20 hours of shadow flicker per year, five are participants and six are non-participants. The greatest amount of expected shadow flicker at the home of a participant is 39 hours, 21 minutes per year; the greatest amount of expected shadow flicker at the home of a nonparticipant is 33 hours, 11 minutes. There are 4,462 annual daylight hours in Goodhue County, which means that the maximum exposures for both participants and non-participants is less than one percent of the available daylight hours per year.<sup>92</sup> This does not take into account flicker at homes with more than one turbine providing shadow flicker.

79. The Commission has no setback standards that are explicitly directed at shadow flicker. The proposed site permit recommended by OES/EFP in this case would require the Applicant to provide, at least ten working days prior to the pre-construction meeting, data on shadow flicker impacts on each residence for both participating and non-participating landowners. It further provides that the Applicant "shall

provide documentation on its efforts to minimize shadow flicker impacts.,<sup>93</sup> In addition, the Commission's general wind permit standards require that applicants establish procedures for handling and reporting

<sup>90</sup> Ex. 7, Zilka Direct at 4-5 & Attachment A. <sup>91</sup> Ex. 7, Zilka Direct Attachment A at 6.

<sup>92</sup> Ex. 7, Zilka Direct at 5 & Attachment A. These results are virtually identical to a study HDR conducted in July 2010. See Ex. 24A at 538-611.

<sup>93</sup> OES Proposed Site Permit § 6.2.

complaints to the Commission concerning any part of the LWECS in accordance with the procedures provided in permit." Careful siting, avoidance and/or shutting a turbine off are the only mitigation options.

80. The Nicollet County ordinance, in part upon which the County's ordinance was based, provides for a limit of 30 hours per year for any receptor within a one mile radius of each turbine.<sup>95</sup>

#### **D. Application of the Ordinance.**

81. A 10 RD setback is not a fixed distance but is a fixed parameter, determined by the length of the turbine rotor used in a particular project. In this case, a 10 RD setback amounts to 2,707 feet, or more than one-half mile from a nonparticipating dwelling.<sup>96</sup>

82. If the County ordinance were applied, AWA Goodhue claims the 10 RD setback for non-participating residences would preclude placement of 43 of the 50 turbines proposed for this project." Although the ordinance would allow a 750-foot setback for participating owners, AWA Goodhue claims the 2,707 -ft setback for nonparticipants. essentially would "swallow" the shorter setback for participants." A single nonparticipating landowner could preclude the siting of a wind turbine in an area of approximately four-fifths of a square mile surrounding the non-participant's property.<sup>99</sup>

83. The Applicant has examined whether the project could proceed under the ordinance by using fewer, larger turbines at the same locations; but because larger rotor diameters would result in an even longer setback distance, this option was not feasible.<sup>100</sup> The Applicant also considered use of a smaller turbine, which would result in a shorter setback distance; but this option would reduce the project size to 36 megawatts.'? Finally, the Applicant considered but made no attempts in acquiring more land rights so that the project could be sited with the proposed equipment in compliance with the 10-RD setback. ~~This analysis showed~~AWA Goodhue speculates that the 10-RD standard would require so much additional land (approximately seven times the acreage already negotiated with landowners) that the project would become cost-prohibitive. but did not provide supporting data.'?

<sup>94</sup> Ex. 21, Attachment A at 15; Proposed Site Permit, Attachment 2. <sup>95</sup> Nicollet County Ordinance § 904.1.

<sup>96</sup> Ex. 3, Burdick Direct at 15. One-half mile is 2,640 ft. <sup>97</sup> Ex. 3, Burdick Direct at 16 & Attachment 3F.

<sup>98</sup> *Jd.*

<sup>99</sup> Ex. 10, Burdick Surrebuttal at 5. <sup>100</sup> Ex. 3, Burdick Direct at 17.

<sup>101</sup> *Jd.* at 18.

<sup>102</sup> Ex. 2, Robertson Direct at 4; Tr. 1 :199 (Burdick).

20

84. The County was aware when the ordinance was passed that a setback of this magnitude ~~would~~may leave very little area available for siting LWECS close to non-participating residences.<sup>103</sup>

85. ~~Although t~~The other parties ~~have suggested~~claim that the Applicant could re-negotiate its leases and participation agreements to take advantage of the 750-foot setback allowed for participants, or could offer to pay more money to nonparticipants in order to obtain more land rights,<sup>104</sup> the record is clear that ~~application of the 10-RD setback to this project (as it has been developed to date) will effectively preclude the entire project. Applicant has made no attempt to either increase landowner or non-participant payments to secure increased participation or to alter participant setbacks to Goodhue County's 750 foot setback. The assertion that the Applicant might be able to negotiate waivers of this requirement with those who have declined to participate in the past is speculation that is not founded in any evidence.~~

### VIII. Setbacks for Roads.

103. The County's ordinance provision for a commercial WECS provides for a public road setback of 1.1 times the height of a turbine, but allows for a possible reduction for minimum maintenance roads or roads with an average daily traffic count of less than ten.<sup>124</sup> This provision also applies to future rights-of-way if a "planned changed or expanded right-of-way is known."

104. The Commission's ~~has no~~ general wind permit standards. Of permits issued, some call for a minimum setback of 250 feet from the edge of the nearest road right-of-way.<sup>125</sup> In addition, the Commission typically requires the permittee to make satisfactory arrangements for road use, access road intersections, maintenance and repair of road damage with the governmental jurisdiction having authority over each road. A permittee is also required to promptly repair any private roads, driveways, or lanes that are damaged, unless otherwise negotiated with the landowner."

105. Based on the height of the turbines proposed in this case, the County ordinance would require a setback of 438 feet from the edge of all road rights of way.<sup>127</sup>

106. The Applicant's proposed site plan does not place any wind turbine within 438 feet from the edge of any road right of way. ~~Although the County ordinance provides for a setback that is more stringent than the Commission's general wind permit standards, t~~The Applicant's site plan would comply with both the County's standards.F"

## IX. Setbacks for Other Rights of Way.

107. The ordinance provision for other rights of way provides for a setback of the lesser of (a) 1.1 times the total height of a turbine, or (b) the distance of the fall zone, as certified by a professional engineer, plus 10 feet.<sup>129</sup> The fall zone is defined as the area that is the furthest distance from the tower base in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structures.<sup>130</sup> The ordinance ~~does not specifically define~~ "other rights of way," ~~but indicates that to include~~ "railroads, power lines, etc." ~~are included~~ in this category.<sup>131</sup>

<sup>124</sup> Ex. 24B, Art. 18, § 4, subd. 1. <sup>125</sup> Ex. 21, Attachment A at 8.

<sup>126</sup> Ex. 21, Attachment A at 10-11. <sup>127</sup> Ex. 3, Burdick Direct at 10.

<sup>128</sup> Ex. 3, Burdick Direct at 10.

<sup>129</sup> Ex. 24B, Art. 18, § 4, subd. 1.

<sup>130</sup> Ex. 24B, Art. 18, § 4, subd. 9.

<sup>131</sup> Ex. 24B, Art. 18, § 4, subd. 1.

25

108. The Applicant does not propose to use any guyed towers in this project.<sup>132</sup> If the ordinance were applied in this case the "fall zone" language would be inapplicable, and the setback from other rights of way would be 1.1 times the total height of a turbine.

109. The Commission ~~s does not have~~ general wind permit standards ~~do not specifically that~~ address setbacks from other rights of way. These setbacks have been negotiated by applicants and the entities controlling other rights-of-way within the site permit boundaries.<sup>F</sup>

110. The Applicant has ~~yet to~~ negotiated setback agreements with the owners of all rights of way that would be impacted by placement of a wind turbine near their property.<sup>134</sup> ~~Negotiated agreements protect the rights of the parties to the agreement, but would not necessarily address protection of the public health and safety.~~

111. If the County ordinance were interpreted to include pipeline easements, application of this setback would preclude the placement of four of the 50 proposed turbines.<sup>135</sup>

112. There is no evidence in the record that ~~the project owners and~~ any owner of a right-of-way in the project area ~~have addressed protection of public health and safety s failed to adequately protect the right-of-way~~ through the agreements negotiated with the Applicant.

113. For the above reasons, there ~~is~~ no good cause not to apply this provision of the ordinance to the project.

X. **Setbacks for Public Conservation Lands.**

114. The County ordinance provides for a setback of "3 RD Non-Prevailing and 5 RD Prevailing" from public conservation lands. Public conservation lands are defined as:

Land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, State Scientific and Natural Areas, federal Wildlife Refuges and Waterfowl Production Areas. For the purposes of this section public conservation lands will also include lands owned in fee title by non-profit conservation organizations. Public conservation lands do not include private

<sup>132</sup> Tr. 3B:50.

<sup>133</sup> See, e.g., Ex. 21, Attachment A at 11 (permit condition requiring repair of private roads "unless otherwise negotiated with landowner"); OES Comments (Dec. 20, 2010), Attachment 1 at 4.

<sup>134</sup> Ex. 3, Burdick Direct at 11.

<sup>135</sup> Ex. 3, Burdick Direct at 11.

26

lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.F"

115. The ordinance defines prevailing and non-prevailing winds in the same manner as for the property line setback (with prevailing wind defined as two fixed 100° arcs, as opposed to wind direction determined by actual measurement). There is no definition for "non-profit conservation organization" in the ordinance.

116. The Commission's ~~general wind permit standards~~permitting practice is to provide that the wind access buffer (the setback of 5 RD prevailing by 3 RD non-prevailing) applies to all parcels for which the permittee does not control land and wind rights, including all public lands. As noted above, however, the Commission permits the use of actual data to determine the direction of prevailing and nonprevailing winds. The Commission's ~~general wind permit standards also provide~~practice has been that setbacks from state trails and other recreational trails shall be considered on a case-by-case basis.!" This is consistent with the Commission's case-by-case permit siting. On the other hand, the County's ordinance contains specific criteria which allow it to be applied consistently and predictably.

117. The Applicant has filed no testimony indicating any objection or that application of this setback would affect the project. ~~The County offered no evidence as to the need for a setback of this magnitude for public lands or the reason why this setback was selected.!"~~

118. The Applicant has not objected to application of the County's ordinance standard is more stringent because of its definition of prevailing and non-prevailing winds; but the Commission's standard could be more stringent than the ordinance if state trails or recreational trails were involved. The Administrative Law Judge concludes that this portion of the ordinance is overbroad because the definition of prevailing and non-prevailing winds uses a fixed proxy in lieu of actual data. The ordinance is also ambiguous because it fails to define a "non-profit conservation organization.", and has not met its burden to establish by clear and convincing evidence that the County Ordinance requirement is arbitrary or capricious as it pertains to setbacks from public conservation lands.

-There is no good cause not to apply this section of the ordinance to the project.

## **XI. Setbacks for Wetlands.**

119. The County's ordinance provision for a commercial WECS provides for a wetlands setback of either (a) 1,000 feet, or (b) "3 RD non-prevailing and 5 RD prevailing," but it does not define the term "wetland." The wind direction is defined in the same manner as for property line setbacks, using a 100° arc instead of actual measurements. It is unclear from the ordinance when a 1,000-ft setback would be required, as opposed to a 3 RD by 5 RD setback.

<sup>136</sup> Ex. 248, Art. 18, § 2, subd. 25. <sup>137</sup> Ex. 21, Attachment A at 8.

<sup>138</sup> The Nicollet County ordinance has a similar "public conservation lands" setback, but that ordinance provides for a setback of 1.1 times the total height. See Nicollet County Wind Energy Conversion Systems Ordinance § 801.1.

27

120. The County's witnesses recalled very little if any discussion of the wetlands setback in the meetings that led to passage of the ordinance. The county does have protections of wetlands, shorelands and its wild and scenic district, for the purpose of protection of areas subject to flooding and for aesthetic reasons. Much of this protected area is within the project area boundary.<sup>28</sup> This provision was modeled on the Nicollet County ordinance.<sup>139</sup>

121. ~~In the General Wind Permit Standards Docket, the DNR initially recommended a 1,000 foot setback from all wetlands, but it ultimately recommended deferring action on that proposal.~~ The Commission ~~consequently retained its~~ has a practice of prohibiting placement of turbines in wetlands, but requiring no specific setback, presumes regulation by other entities, in this case, the County. The Commission indicated its willingness to consider this issue in the future when and if the record were further developed."

<sup>28</sup> Wozniak, Tr. 3B, p. 52, l. 11 – p. 54, l.13.

122. In siting turbines near wetlands, the Commission generally defers to the requirements of other state, local, and federal agencies, such as Goodhue County, charged with regulating wetlands. The proposed site permit requires the Applicant to provide a desktop and field inventory of potentially impacted native prairies, wetlands, and any other biologically sensitive areas within the site and to submit the results to the Commission and the DNR. The proposed site permit also requires compliance with all permits or licenses issued by various state and federal agencies, including Minnesota Pollution Control Agency storm water permits and a DNR license to cross public lands and water, public waters work permits, and state protected species consultations. The Commission's ~~permit standards practice~~ would allow an electric collector and feeder line to cross or be placed in public waters or public water wetlands, subject to permits obtained from the DNR and other government entities.

123. Wetlands are regulated by the Board of Water and Soil Resources, the County Soil and Water Conservation District, the U.S. Army Corps of Engineers, and the DNR, and the Goodhue County Board through its Zoning Ordinance and Conditional Use Permitting Process.<sup>141</sup>

124. The Applicant submitted a wetlands delineation report prepared by Westwood Professional Services to the S1. Paul District of the U.S. Army Corps of Engineers and the Goodhue County Soil and Water Conservation District, in support of a wetland boundary and type determination requested under Minn. R. 8420.0310. The report delineated and located portions of 45 wetlands within the 4.10 sq-mile project construction area, defined as all areas that would potentially incur temporary or permanent disturbance by construction of wind turbine generators, access roads, underground electrical collection cables, crane paths, and Substations. All of the wetlands are expected to be regulated under the Minnesota Wetland Conservation Act, and 40 of them are also expected to be regulated under the federal Clean Water Act. Most of the wetlands in this area are associated with ditches and channelized drainages, which are linear features

<sup>139</sup> Tr. 38:14 (Wozniak); Tr. 2:304 (Hanni). The Nicollet County ordinance, however, defines a wetland as USFW Types III, IV, and V. See Nicollet County Wind Energy Conversion Systems Ordinance § 801.1.

<sup>140</sup> Ex. 21 at 4.

<sup>141</sup> Tr. 3A: 12.

that are difficult to avoid. All but two of the delineated wetlands are substantially disturbed by ditching, sedimentation, and tillage from agricultural activities.<sup>142</sup>

125. The Applicant has met twice with the Technical Evaluation Panel (composed of employees of the Board of Soil and Water Resources, the County Soil and Water Conservation District, and the U.S. Army Corps of Engineers). Four wetlands were eliminated from the project construction area because of specific impacts, and they were replaced with different wetlands. Although the permitting process is not yet final, the Applicant has determined to date that 0.225 acres of wetlands would be permanently

impacted by access roads and subject to replacement through a wetland bank credit.<sup>143</sup>

126. Based on current plans, the turbine nearest to a delineated wetland would be 275 ft away.<sup>144</sup>

127. Wetlands are shaped irregularly, and it is difficult to apply a distance setback framed in terms of wind direction to an irregular shape. Assuming a constant 5-RD setback (1,353 ft) applied to each wetland in the project area, this setback requirement would eliminate 45 of the proposed 50 turbines.!" This "worst case" analysis might overstate the impact somewhat, but it is difficult to be more precise based on the record.

128. There is no evidence that wetlands require a setback of this magnitude to protect the environment. Wetlands and wind turbines are mutually exclusive, in that wetlands are typically located in areas of low elevation, and wind turbines are located at higher elevations.!" It would not be possible to build a turbine tower in land saturated with water and meet required construction and engineering standards.!"

129. The types of wetlands that are typical in the project construction area are not good habitats for birds.<sup>148</sup> ~~A setback requirement of 1,000 feet or more might place a turbine tower near a forested area and possibly result in more avian impacts than if the turbine were sited closer to a wetland.~~" (speculation, no citation) The Minnesota DNR recommends a 1,000 foot setback from all wetlands, streams, rivers and lakes in the State Public Waters Inventory and the National Wetlands Inventory.<sup>29</sup>

130. The County's setback provision is ~~ambiguous, in that it is unclear from the terms when a setback of 1,000 feet or more would be required. It is also a crude method of protecting wetlands, compared to less specific than~~ the individualized analysis of the impacts on the quantity, quality, and biological diversity of wetlands conducted by the Technical Evaluation Panel that represents all the regulating

<sup>142</sup> Ex. 5, Peterson Direct at Attachment A. <sup>143</sup> Ex. 5, Peterson Direct at 4-6.

<sup>144</sup> Ex. 5, Peterson Direct at 4.

<sup>145</sup> Ex. 3, Burdick Direct at 13 & Attachment 3-E. <sup>146</sup> Tr. 3A:61 (Peterson).

<sup>147</sup> Tr. 3A:54 (Peterson).

<sup>148</sup> Tr. 3A:26, 36-37 (Peterson). <sup>149</sup> *Id.*

agencies.

~~For all the above reasons, Because the Commission generally defers to the requirements of other state, local, and federal agencies charged with regulating wetlands.~~ there is no good cause not to apply this provision of the ordinance to the project.

<sup>29</sup> p. 3. In the Matter of Establishment of General Wind Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts, Docket No. E.G-999/M-07-1102, Order Establishing General Wind Permit Standards.

## **XII. Setbacks for Other Structures.**

131. The County Ordinance provides for a setback of commercial WECS from "other structures" of "[t]he fall zone, as certified by a professional engineer plus 10 feet or 1.1 times the total height.,<sup>150</sup> The ordinance does ~~not~~ define "other structures:" through its adoption of the International Building Code. As noted above, the definition of "fall zone" applies only to guyed towers; because this project would not involve guyed towers, that portion would not be applicable. The ordinance therefore would call for a setback of 1.1 times the total height for "other structures."

132. The Applicant has not objected to or identified this provision of the ordinance as one that would impact this project.

133. Because there is no objection from the Applicant, ~~of its ambiguity as to the type of structure it would apply to,~~ there is no good cause not to apply this provision of the ordinance to the project.

## **XIII. Setbacks for Other Existing WECS and Internal Turbine Spacing.**

134. The County ordinance provides for a setback from other existing WECS and internal turbine spacing of "3 RO, non-prevailing and 5 RO prevailing." In this section of the ordinance, prevailing wind appears to be defined differently than in other sections pertaining to setbacks. "Prevailing wind" is defined to mean the predominant wind direction in Goodhue County; non-prevailing wind is defined as the non-dominant wind direction in Goodhue County. 51

135. The Commission has no general permit standards pertaining to internal turbine spacing, ~~but and~~ the proposed site permit provides that turbine towers shall be spaced no closer than three RO in the non-prevailing wind directions and five RO on the prevailing wind directions. If required during final micro-siting of the turbine towers to account for topographic conditions, up to 20 percent of the towers may be sited closer than the above spacing, but the permittee shall minimize the need to site the turbine towers closer.<sup>152</sup>

136. The County ordinance and the proposed site permit are similar, but the ordinance does not allow for closer spacing of up to 20 percent of the towers. It is more stringent, but the Applicant has not indicated that it has any objection to application of this provision or that it would impact the project in any way. There is no good cause not to enforce the Goodhue County Ordinance.

<sup>150</sup> Ex. 248, Art. 18, § 4, subd. 1.

<sup>151</sup> Ex. 248, Art. 18, § 2. subds. 18 and 21. <sup>152</sup>

Proposed Site Permit § 4.10.

#### **XIV. Setbacks for Bluffs.**

137. The County ordinance provides for a setback for commercial WECS of 1,350 feet from the top of bluffs over the Mississippi and Cannon Rivers and 500 feet from the top of other bluffs.<sup>153</sup> County Ordinance Article 18, § 4, subd. 1, establishes setbacks from bluff tops, which are common in Goodhue County.

138. The Commission has no setback standard for bluffs and has not addressed setbacks from bluffs in site permits, as bluffs have not been a factor in previous LWECS site permit dockets.<sup>4</sup>

139. The project area does not include any bluffs, and the Applicant has not indicated that this ordinance provision would impact the project in any way.

140. ~~Although some type of s~~Setbacks for bluffs would be reasonable if there were bluffs in the project area, and there appears to be no reasons no good cause not to apply this ordinance provision to the project. Application of the ordinance would have no impact on the project.

#### **XV. Discontinuation and Decommissioning.**

141. Section 5, subdivision 12 B of the County ordinance requires that WECS shall have a decommissioning plan outlining the anticipated means and cost of removal at the end of the serviceable life or upon becoming a discontinued use. Subdivisions 12 C through 12'E of the County ordinance require an applicant to fund decommissioning with a cash escrow or irrevocable letter of credit in an amount equal to 125% of the cost estimate prepared by a competent party to ensure that decommissioning is completed as required by the ordinance. ~~The ordinance does not specify when the cash or irrevocable letter of credit is to be provided to the County, who would hold the cash or letter of credit, how any cash would be invested, or how the County would obtain access to the funds if that became necessary.~~ The specific language of Article 18 requires "cash escrow or an irrevocable letter of credit in an amount equal to 125% of the cost estimate prepared by a competent party..." Article 18, Section 5, subd. 12(E). A competent party is defined as an individual "approved by the County; such as a professional engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning." Article 18, Section 5, Subd. 12(c). Additional details are to be addressed in a Development Agreement.

142. The Commission's rule, Minn. R. 7854.0500, subp. 13, requires applicants to include information regarding decommissioning of the project and restoring the site, including a description of the anticipated life of the project; the estimated decommissioning costs in current dollars; the method and schedule for updating the costs of decommissioning and restoration; the method of ensuring that funds will be available for

decommissioning and restoration; and the anticipated manner in which the project will be decommissioned and the site restored. The Commission's rule does not require a cash escrow or irrevocable letter of credit. Like the County Ordinance, the Commission's rule does not specify when the cash or irrevocable letter of credit is to be provided to the Commission, who would hold the cash or letter of credit, how any cash would be invested, or how the Commission would obtain access to the funds if that became necessary.

143. The Applicant has proposed that the cost estimate and funding be provided in year 15, which is approximately halfway through the project's

<sup>153</sup> Ex. 248, Art. ~~19~~18, § 4, subd. 1.

<sup>154</sup> OES Comments (Dec. 20, 2010), Attachment 1 at 6.

31

expected useful life of 25 to 30 years.<sup>155</sup> Goodhue County's decommissioning fund requirement begins at the same time that decommission becomes a necessity, upon construction. A requirement to fund the decommissioning cost in year 1 versus year 15 would add approximately \$1.5 million to the cost of the project of a \$179 million project, less than 1% of the total cost.<sup>156</sup>

144. The ordinance ~~is ambiguous in that it~~ does not describe what is to be done with the cash or irrevocable letter of credit, who would hold the cash or how it would be invested, when it was to be given to the County, or how the County would obtain access to the funds. The Commission's rule requires more specific information about the development of the cost and the schedule for updating it, but also does not describe the specifics, as above, and is not more specific than the Goodhue County Ordinance. A requirement to fund decommissioning cost at the beginning of the project is ~~not~~ ~~un~~reasonable for a project of this magnitude. AWA Goodhue has not met its burden to establish that the Ordinance is arbitrary and capricious and; ~~however, the ambiguities in the ordinance would make it difficult to apply in its current form. For these reasons, there would be no~~ good cause not to apply this ordinance provision.

## **XVI. Stray Voltage Testing.**

145. Section 6, subdivisions 1 through 3 of the County ordinance require that a commercial WECS shall offer to perform at least two pre-construction stray voltage tests at all registered feedlots within the proposed project boundary and within a one-mile radius beyond the proposed project boundary. The results of any test are to be provided to property owners, the MPUO, local utilities, and the County. If a registered feedlot owner within the project boundary subsequently has a stray voltage test performed, and it is found that the cause of the stray voltage is attributed to the commercial WECS project, the project owners are required to pay for all costs associated with the testing and correcting of the problem.

146. ~~This issue was of particular concern to one member of the County's~~

~~Planning Advisory Commission."~~ The County included the stray voltage provisions in the ordinance because:

Whether or not this is a conclusively documented phenomenon, we felt a good baseline should [be] established by requiring preconstruction analysis to aid in evaluating the validity of potential future claims and prevent unnecessary conflict.<sup>158</sup>

147. The Commission has not previously included any requirements pertaining to stray voltage in site permits for wind farms. ~~because t~~There is no scientific evidence that wind farms cause stray voltage and there is no scientific evidence that they do not cause stray voltage.<sup>159</sup>

<sup>155</sup> Ex. 2, Robertson Direct at 10. <sup>156</sup> Ex. 2, Robertson Direct at 11. <sup>157</sup> Tr. 38:10 (Wozniak).

<sup>158</sup> Ex. 24, Hanni Rebuttal at 2.

<sup>159</sup> OES Comments (Dec. 20, 2010), Attachment 1 at 6.

32

148. "Stray voltage" is the term used to refer to neutral-to-earth voltage that appears on grounded surfaces in buildings, barns, and other structures. It is generally caused by electrical problems in the wiring on a farm or the interconnection between a farm and the local utility distribution system. It is condition that may exist between the neutral wire of a service entrance and grounded objects in buildings. At a farm served by single-phase electrical service, the grounded conductors are connected together at the service point (the point where the farm's grounding system is connected to the utility's grounding system). As electrical load at the farm increases, the return current to the substation increases, and, depending on the resistance of the ground, small voltages may be measured between a grounding conductor in a barn and an isolated ground rod. If an animal makes contact with metal that is connected to a ground conductor, a small current may flow through the animal from the ground to the piece of metal.<sup>160</sup>

149. Stray voltage is not associated with transmission lines. Stray voltage is associated with distribution systems. Wind projects utilize a collection system, essentially the reverse of a distribution system, with the same components and at the same voltage (34.5kV), connecting the turbines<sup>30</sup>. Wind projects also have their own substations and transformers, and the collection system functions as a separately derived system., yet the systems are connected together, "the connection is via the grounding conductors, and in electrical work, generally all the ground conductors are always tied together."<sup>31</sup> -In addition, wind projects do not generate ground or neutral currents because of the type of transformer used at each turbine. Under normal

<sup>30</sup> Ex. 4A, One Line Drawing.

<sup>31</sup> Malamen, Tr. Vol. 1, p. 212-213.

operation, there is no intentional current in the ground wire. However, stray voltage is "stray" voltage, and not intentional.<sup>32</sup> All current flows in the insulated underground conductors that connect the generators to the substation, which is connected to the transmission grid through dedicated 69 kV lines" 161

•  
150. Although an electrical fault could send current into the ground wire of a wind project for a few tenths of a second, until it is cleared.,<sup>162</sup> Malamen, employed by Consulting Engineers Group, admitted that, under some conditions, a "fault" in the system could allow current to enter the farm system wiring and potentially expose livestock to electrical shock.<sup>33</sup>

151. There is no evidence that any wind farm operation has ever caused stray voltage problems of any sort.<sup>163</sup> No reports of stray voltage have been associated with any of Minnesota's existing wind farms." However, even participant landowners are concerned about stray voltage.<sup>34</sup> Zumbro Falls, in nearby Wabasha County was the site of a recent landmark stray voltage decision and award<sup>35</sup>.

152. There are approximately 150 feedlots and dairy farms within the project area and within one mile of the permit boundary."

153. The requirement to conduct two pre-construction stray voltage tests could result in a delay of seven months and would add approximately \$1.2 million to the cost of the project.<sup>166</sup>

<sup>160</sup> Ex. 4, Malamen Direct at 4; Ex. 24A at 2591-94.

<sup>161</sup> Ex. 4, Malamen Direct at 5-6; OES Comments (Dec. 20, 2010), Attachment 3 at 3. <sup>162</sup> Tr. 1 :209-12 (Malamen).

<sup>163</sup> Ex. 4, Malamen Direct at 6-7.

<sup>164</sup> OES Comments (Dec. 20, 2010), Attachment 3 at 3. <sup>165</sup> Ex. 4, Malamen Direct at 8.

<sup>166</sup> Ex. 2, Robertson Direct at 10.

154. The Applicant agreed to do pre- and post-construction stray voltage testing for three to five landowners who are participants in the project.:"

155. In the absence of any evidence that stray voltage is associated with wind farm operations, Because applicants have agreed to pre- and post-construction stray voltage testing for concerned participant landowners, non-participating landowners who request testing should also have that option. There is no good cause not to apply these ordinance provisions to the project.

<sup>32</sup> Tr. 1:2 (Malamen).

<sup>33</sup> Malamen, Tr. Vol. 1, p. 209-212.

<sup>34</sup> Kalaas, Tr. Vol. 1, p. 251.

<sup>35</sup> Siewart v. Northern States Power, available online at <http://www.lawlibrary.state.mn.us/archive/supct/1101/OPA071975-0126.pdf>

## XVI. Miscellaneous Sections.

156. In section 3, subdivision 6, the County ordinance requires a commercial WECS to "provide proof of liability insurance covering the towers/project covering the lifespan of the project from the initial construction to final decommissioning."

157. The Applicant does not object to this requirement, contending that the Power Purchase Agreements approved by the Commission and the Development Agreement negotiated with the County contain similar provisions that require the Applicant to obtain insurance and set certain limits.<sup>169</sup>

158. The Commission's has no general permit standards ~~do not~~ that explicitly require liability insurance, but liability insurance is a requirement of the Power Purchase Agreements (the approval of which is a condition of the site permit). The ordinance could be applied without conflicting with any of the Commission's general permit standards. There is no good cause not to apply the County's Ordinance.

159. In section 5, subdivision 6, the County's ordinance requires a commercial WECS to adhere to, but not exceed, FAA permits and regulations. It further provides that red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds, and that red pulsating incandescent lights should be avoided.

160. The Commission's general wind permit standards provide that no turbines, towers or associated facilities shall be located so as to create an obstruction to navigable airspace of public and private airports in Minnesota or adjacent states or provinces. The required setbacks or other limitations must be determined in accordance with the requirements of the Minnesota Department of Transportation Division of Aviation and the Federal Aviation Administration (FAA). With regard to turbine lighting, towers shall be marked as required by the FAA and there shall be no lights on the towers other than what is required by the FAA.<sup>170</sup>

<sup>167</sup> Tr. 1 :185-86 (Burdick).

<sup>168</sup> Ex. 24B, Art. 18, § 3, subd. 6. <sup>169</sup> Ex. 2, Robertson Direct at 11. <sup>170</sup> Ex. 21 Attachment A at 9, 13.

161. ~~It is unclear whether the County ordinance requires something different than the FAA requires in terms of lighting the towers, but it~~ appears that the ordinance is generally consistent with the Commission's permit standards and is not more stringent. The FAA has issued a Determination of No Hazard for all 50 turbines in the current layout!" ~~The ordinance could likely be applied without conflicting with the general wind permit standards.~~ There is no good cause not to apply the County's Ordinance.

162. In **section 5, subdivision 8**, the County's ordinance requires that all feeder lines equal to or less than 34.5 kV, installed as part of a WECS, shall be buried where reasonably feasible.

163. The Commission ~~'s~~ has no general wind permit standards ~~provide that~~ regarding feeder lines measuring 34.5 kV ~~may be placed overhead or underground within public rights-of-way or on private land adjacent to public rights-of-way if a public right-of-way exists, except as necessary to avoid or minimize human, agricultural, or environmental impacts.~~ Feeder lines ~~may be placed on public rights-of-way only if~~ the applying entity is a public service corporation (public utility) and has received approval or the required permits have been obtained from the responsible government unit. In all cases, the permittee is required to avoid placement of feeder lines in locations that may interfere with agricultural operations.!"

164. The Applicant does not object to application of this ordinance provision, because it plans to bury all communication and feeder lines when reasonably feasible.<sup>173</sup>

165. The Commission ~~'s approach here is similar to that in negotiating setbacks to private rights-of-way the owner of the right of way controls the decision whether the feeder line is to be overhead or underground.~~ The proposed site permit provides that feeder lines may be overhead or underground, and that locations "shall be negotiated with the affected landowner(s)."

166. ~~It is hard to say that the ordinance is "more stringent" than the Commission's general wind permit standard, because the ordinance requires "burial where reasonably feasible" and the Commission's standard requires the Applicant to do whatever the landowner wants to be done.~~ These standards are virtually identical. It would not be necessary to apply the ordinance to achieve the same result. There is no good cause not to apply the ordinance.

167. **Section 5, subdivision 10**, of the County's ordinance requires a commercial WECS to provide a cash escrow or irrevocable letter of credit in an amount equal to 125% of the cost to repair anticipated damages to public infrastructure, including public roads and drainage systems as determined by the road authority. The funds would be held until the County issues a written release stating that the applicant has returned all routes to pre-construction condition.

<sup>171</sup> Ex. 3, Burdick Direct at 23. <sup>172</sup> Ex. 21, Attachment A at 10. <sup>173</sup> Ex. 3, Burdick Direct at 23.

168. The Commission's general wind permit standards require an applicant to "make satisfactory arrangements" for road use, access road intersections, maintenance and repair of damages, with the governmental jurisdiction having authority over each road.

The permittee is to notify the permitting authority of such arrangements upon request."

169. The Applicant has not objected to this provision of the ordinance. Again, there appears to be no conflict between the ordinance and the Commission's standard permitting practice. The ordinance provision could be applied without conflicting with the Commission's general permit standards permitting practice. There is no good cause not to apply the County Ordinance.

170. Section 7, subdivisions 1 and 2, require the applicant to provide an acoustic study that demonstrates the project will be compliant with State of Minnesota Noise Standards. The study shall include the estimated dB(A) levels at all receptors within one mile of the nearest turbine within a project area and shall include accumulated sound within the project.

171 . The Commission's has no general wind permit standards, and all permits require compliance with Minnesota Noise Standards at all residential receivers. There appears to be no conflict between the ordinance and the Commission's standards. The Applicant provided an acoustic study that demonstrates-predicts that the project will comply with State of Minnesota Noise standards.

172. The definitions section of the ordinance contains a definition of a "Qualified Independent Acoustical Consultant" as a person with full membership in the Institute of Noise Control Engineers/INCE, or other demonstrated acoustical engineering certification. The Independent Qualified Acoustical Consultant can have no financial or other connection to a WECS developer or related company.!" This requirement is meant to assure objectivity in testing rather than utilize modeling and testing by a party of interest.

173. There is no good cause not to apply the ordinance. It does not appear that the term Qualified Independent Acoustical Consultant is used elsewhere in the ordinance, so it is unclear why this term is defined. If the Commission were to apply the ordinance, this reference should be excluded because of its ambiguity. (this is not ambiguous, it is specific)

174. In section 9, subdivision 5, the ordinance requires the applicant to "minimize or mitigate" interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. In addition, it requires the applicant to notify all communication tower operators within two miles of the proposed WECS, and it further provides that no WECS shall be constructed so as to interfere with County or Minnesota Department of Transportation microwave transmissions.

<sup>174</sup> Ex. 21, Attachment A at 11; Ex. 248, Art. 18, § 2, Subd. 26.

175. The Commission's shas no general wind permit standards for electromagnetic interference, but all permits require the permittee to submit a plan for

conducting an assessment of television signal reception and microwave signal patterns in the project area. The assessment shall be designed to provide data that can be used to determine whether turbines and associated facilities are the cause of any disruption or interference that may occur after the turbines are placed in operation. The permittee "shall be responsible for alleviating any disruption or interference" caused by the turbines or any associated facilities.<sup>176</sup>

176. Because the Commission does not have standards, but Commission practice regarding electromagnetic interference are more stringent than those contained in the ordinance, there would be good cause not to apply this ordinance provision and apply the Commission's more stringent permit conditions.

## **PUC ORDER POINT 2**

### **V. Good Cause.**

47. The phrase "good cause" is not defined in the statute, but the common legal meaning of "good cause" is a legally sufficient reason." A conclusion as to whether there is or is not good cause is a mixed question of fact (what the record shows) and law (whether the showing is sufficient)." The Commission applied a similar good cause standard in Minn. Stat. § 216B.243, subd. 5, in deciding to extend the 12-month time period for determining whether to issue a certificate of need in this case.

36. The County, Goodhue Wind Truth, and the Coalition for Sensible Siting have argued in part that there is no conflict between the County's ordinance requirements and the Commission's general permitting standards because the Commission has *no* permitting standards applicable to LWECS of 25 megawatts or more. ~~They rely on the General Wind Permit Standards Order for the proposition that the Commission~~ has only established permitting conditions for projects under 25 megawatts.

37. ~~This argument fails to consider the purpose of the general permit standards docket.~~ The Commission had no existing permit standards that were applicable to all site permit applications for LWECS and no party is able to provide a citation to permit standards adopted by the Commission for LWECS over 25MW. The 2007 legislation required the Commission to adopt general permit standards and instead the Commission adopted only standards for use by counties that had elected, under Minn. Stat. § 216F.08, to assume responsibility for processing applications for permits for LWECS with a combined nameplate capacity of less than 25 megawatts.<sup>36</sup> ~~The fact that the Commission complied with the legislation and provided this guidance to counties in the General Wind Permit Standards Order does not mean that the commission's existing standards, established in other dockets, became inapplicable to LWECS of 25~~

---

<sup>36</sup> Minn. Stat. §216F.05 Rules; Ex. 21, *In the Matter of Establishment of General Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts, Order Establishing General Wind Permit Standards, Docket No. E.G-999/M-07-1102.*

~~megawatts or more.~~

38. In addition, the County, Goodhue Wind Truth, the Coalition for Sensible Siting, and Belle Creek Township contend that the statutory provision giving counties the authority to adopt more stringent standards "stands on its own," ~~so to speak,~~ and provides ~~unlimited~~ authority for any county to adopt standards for LWECS that the Commission must, in turn, apply to projects located in the county unless there is good cause not to do so.

39. Statutory construction is a question of law. When a statute does not expressly define a term, but the term is defined in a related statute, the

<sup>47</sup> *Site Permit Docket*, Notice and Order for Hearing at 4 (Nov. 2, 2010).

<sup>48</sup> *Certificate of Need Docket*, Order Deferring Consideration of Application for Certificate of Need (Nov. 5, 2010).

9

statutes are *in pari materia* and should be construed together." In addition, every law shall be construed, if possible, to give effect to all its provisions."

40. Although Minn. Stat. § 216F.02(c) restricts local governments to the establishment of requirements for the siting and construction of SWECS, the amendment in Minn. Stat. § 216F.081 provides that a county "may" adopt ordinance standards for LWECS that are more stringent than those applied by the Commission. Minn. Stat. § 216F.081 does not indicate how these two apparently conflicting provisions are to be reconciled. This absence, however, does not render the statute ambiguous.

41. ~~It is clear from a reading of the entire statute that a A county generally has authority to regulate SWECS; a county may also assume the responsibility to issue permits for LWECS of less than 25 megawatts, pursuant to Minn. Stat. § 216F.08; when it does so, the county "shall" apply the commission's general permit standards; it "may" grant a variance from a permit standard if the variance is in the public interest; and it "may" adopt by ordinance more stringent standards than those established by the commission. When those events have occurred, it makes sense that the Commission, when issuing site permits for projects of 25 megawatts or larger in that county, would be required to consider and apply any more stringent ordinance standards, so that all LWECS sited within a given county (regardless of whether they are under or over 25 megawatts and regardless of whether the county or the PUC issues the permit) are required to meet similar standards. In all other circumstances, a site permit for an LWECS issued by the Commission "supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances adopted by regional, county, local, and special purpose governments."<sup>51</sup> This reading of the statute gives effect to all of its provisions and construes them consistently with each other. The ALJ has concluded that Chapter 216F unambiguously requires this interpretation.~~

42. The position that any county may regulate LWECS, regardless of size, and that the commission must apply those standards unless there is good cause not to do so, is an interpretation of Minn. Stat. § 216F.081 that ~~conflicts expressly~~ is consistent with other provisions of the Wind Siting Act. This interpretation reads both the limitation provided by 216F.08 (assumption of permitting responsibility for projects under 25 megawatts) and the pre-emption language of 216F .07 out of the Act and reconciles them, and is consistent with, county authority in Minn. Stat. §216F.081. It cannot be the case that local regulation is completely pre-empted by a site permit issued by the Commission, except where the county has established standards by Ordinance, and that the Commission is simultaneously obligated to consider and to apply the local regulation absent good cause. The statute is a clear affirmative policy, and is separate and distinct from 216F.08. Moreover, this interpretation makes no practical sense. No county would go to the expense of assuming There is no requirement, and there is no rational basis, to presume a requirement that assumption of the permitting responsibilities for LWECS

<sup>49</sup> *In the Matter of the Commission's Investigation of Issues Governed by Minnesota Statutes Section 216A.036*, 724 N.W.2d 743, 746 (Minn. App. 2006). See also *Minneapolis Police Officers Federation v. City of Minneapolis*, 481 N.W.2d 372,374 (Minn. App. 1992) (statutes relating to the same subject matter must be construed as consistent with each other).

<sup>50</sup> Minn. Stat. § 645.16.

<sup>51</sup> Minn. Stat. § 216F.07.

10

of less than 25 megawatts, ~~if it could avoid those responsibilities and achieve virtually the same end by is prerequisite to~~ passing an ordinance ~~purporting to apply with~~ more stringent standards applicable to LWECS of all sizes over 25MW, which the commission would be obligated to consider and apply.

43. The Wind Siting Ordinance is analogous to the Power Plant Siting Act, which it is modeled on, which also pre-empts local control of utility infrastructure siting. Many times, the PPSA has been criticized<sup>37</sup> for its provision to utilities of the "local option" where a utility proposing certain projects may choose to apply to a local government<sup>38</sup>. The criticism is that the PPSA is inequitable to the extent that local governments do not have ordinances, resources or expertise to handle siting.

~~43.—Because Chapter 216F is not ambiguous, it is not necessary to consider the evidence of legislative history provided by the DES.~~

44. Rather than give the utilities opportunity to elect local review, as in PPSA, the LWECS Siting Statute puts onus on local governments to affirmatively select local control and take on this responsibility, including development of siting standards if local

<sup>37</sup> Minutes of Annual Hearing, Power Plant Siting Act, online at <http://energyfacilities.puc.state.mn.us/Docket.html?Id=3596>

<sup>38</sup> See Minn. Stat. §216E.05.

control is desired. Only local governments prepared to handle siting will be permitting LWECS in the 5-25MW range.

~~44. If the statute were considered to be ambiguous, the Commission could consider the contemporaneous legislative history in determining the intention of the legislature.<sup>52</sup> The legislative history supports the interpretation that the legislature intended that the Commission would be obligated to consider and apply more stringent county standards only if those counties assumed the responsibility to process applications and issue permits for LWECS of less than 25 megawatts.<sup>53</sup>~~

45. There is no direct link between Minn. Stat. §216F.08 and §216F.081. No distinction is made in §216F.081 between LWECS from 5 MW to 25 MW and those LWECS 25 MW and larger that the PUC exclusively permits. Since a county may assume exclusive permitting authority with no PUC permit to be issued at all for LWECS up to 25 MW, concurrent regulation by county ordinance standards included in a PUC issued permit will only exist where a county does not assume direct permitting authority. Further, there is no provision for severance of various ordinance provisions – the county’s ordinance stands on its own, as a whole, for purposes of evaluation and incorporation into the PUC permit

~~45. Because Goodhue County has not assumed the responsibility to process applications and issue permits for LWECS of less than 25 megawatts, the commission is not obligated to consider or apply the more stringent standards established by the county ordinance.~~

46. ~~If~~The Commission were to conclude nonetheless that it was obligated to consider and apply the ordinance standards unless there ~~wa~~s good cause not to do so.~~it would have to determine the meaning of "good cause,"~~ Good cause has not been demonstrated by AWA Goodhue.

### **PUC ORDER POINT 3**

#### **E. Evidence Regarding Health and Safety to Support the 10-RD Setback.**

86. There is ~~no~~ scientific support in peer-reviewed literature for the proposition that noise and shadow flicker from wind turbines cause ~~any~~ adverse health effects in humans, evidence of which was entered into the record.<sup>Ex. 24, Goodhue County Notebook; Ex. 21 Notebook 2, Testimony of Rick James and Exhibits.</sup> Although some people respond negatively to the noise and shadow flicker qualities generated by the operation of wind turbines, ~~there is no scientific data to show that wind turbines causati~~one any disease process or specific health condltton has not been demonstrated.<sup>1?</sup> However, this is not a personal injury case where causation must be proven, and the burden of proof in this case is on the Applicant. No party demonstrated or would guarantee that wind turbines are

~~safe. In addition, there are no known human health effects from shadow flicker generated by wind turbines in the scientific literature.~~<sup>107</sup>

87. In 2009, the Minnesota Department of Health evaluated the public health effects of wind turbines by reviewing the literature and modeling shadow flicker.<sup>10B</sup> In reviewing the literature, the Department of Health noted that human sensitivity to sound is variable and that low frequency noise accompanied by shaking, vibration, or rattling may be less tolerable to people. It noted that noise measured on the dB(C) scale (which, as noted above, includes more lowfrequency noise that is not audible to the human ear) may better predict annoyance than noise measured on the dB(A) scale.<sup>109</sup>

88. In its model of shadow flicker, the Department assumed a receptor 300 meters (984 ft) perpendicular to, and in the shadow of the blades of a wind turbine. This model suggested that the receptor could be in the flicker shadow of

<sup>103</sup> Ex. 25C; Ex. 29; Tr. 3B:23 (Wozniak).

<sup>104</sup> See Post-Hearing Memorandum of Belle Creek Township at 6-7 ("The negotiated price of a limited waiver of the setback requirement would likely be less than the lease payments to an owner who agrees to turn over a portion of his property to AWA for the placement of a turbine on his property"); Goodhue County Brief at 21; Post-Hearing Brief of Goodhue Wind Truth at 6-7.

<sup>105</sup> See *generally* Ex. 11, Roberts Surrebuttal & Attachment B.

<sup>106</sup> Ex. 11, Roberts Surrebuttal Attachment B at 7.

<sup>107</sup> Ex. 11, Roberts Surrebuttal at 6.

<sup>108</sup> Ex. 24A at 1923-1954. Other copies appear at 2252-83,3727-58, and 5038-69. <sup>109</sup> Ex. 24A at 1944-45.

the rotating blade for almost one and one-half hours per day."? The report does not indicate over what period of time this exposure could occur. The paper then provides "With current wind turbine designs, flicker should not be an issue at distances over 10 rotational diameters (= 1000 meters or 1 km (0.6 mi) for most current wind turbines)." It is unclear whether this conclusion is based on the modeled results or on a recommendation made in the literature.

89. The Department of Health made the following recommendations to assure informed decisions, and added that any noise criteria beyond current state standards used for placement of wind turbines should reflect priorities and attitudes of the community:

-Wind turbine noise estimates should include cumulative impacts (40-50 dB(A) isopleths) of all wind turbines.

-Isopleths for dB(C) - dB(A) greater than 10 dB should also be determined to evaluate the low frequency noise component

-Potential impacts from shadow flicker and turbine visibility should

be evaluated .112

90. The Department of Health also noted that the noise standards set by the MPCA appear to "underweight" low-frequency noise by using the dB(A) measurement. Although this was not included in its recommendations, the Department noted that in other countries, a 5 dB "penalty" is added to measured levels of dB(A) as a surrogate for low-frequency noise, when the difference between measured dB(A) and dB(C) levels is more than 10 dR<sup>113</sup>

91 . The Applicant's noise study modeled the cumulative impacts of all wind turbines, as recommended by the Department of Health. Although it did not model low-frequency noise, because state standards do not require it, the maximum dB(A) measurement of 43 would still meet MPCA standards even if the five dB "penalty" were added to account for low-frequency noise. The Applicant also evaluated shadow flicker impacts using a much more sophisticated modeling system than the Department of Health appears to have used, and its results showed that, using a greater setback distance, 96% of homes in the project area could be exposed to some degree of shadow flicker less than 20 hours per year.

92. Some of the other parties appear to take the position that they are not obligated to direct the Commission's attention to any evidence regarding health and safety to support the setback, as this would constitute an "impermissible shift in the burden of proof" onto them and away from the

<sup>110</sup> Ex. 24A at 1939.

<sup>111</sup> E. 24A at 1939. <sup>112</sup>

Ex. 24A at 1951.

<sup>113</sup> Ex. 24A at 1945-47.

Applicant."!" The Administrative Law Judge advised these parties at the outset of this proceeding that this contested case is not a due process challenge to the ordinance.!" The Applicant is not required to show that the County acted unlawfully in the adoption of the ordinance or that the terms of the ordinance lack a rational basis. Rather, this is a contested case proceeding for the purpose of developing the record as directed by the Commission, so that the Commission may determine for itself its obligation to consider and apply the ordinance under Minn. Stat. § 216F.081 and to determine, if appropriate, whether there is good cause not to apply any provision of the ordinance.

93. ~~Subject to their arguments on burden-shifting, t~~The County and the Coalition for Sensible Siting both cited the Minnesota Department of Health White Paper as support for the 10-RD setback. The Minnesota Department of Health ~~did not, however, recommend a 10-RD setback. What the Minnesota Department of Health~~ said ~~was~~ that "[w]ith current wind turbine designs, flicker should not be an issue at distances over 1 0 rotational diameters." The Applicant has demonstrated that shadow flicker should not be a significant issue for the vast majority of participants and nonparticipants in this project

area, using a 1,500-ft setback for nonparticipants, however “should” and “significant” is significant -- Applicant is not willing to provide a guarantee that flicker will not be an issue.

94. In 1999, the World Health Organization issued a report on community noise concluding that, for a good night's sleep, the equivalent sound level should not exceed 30 dB(A) for continuous background noise over a period of eight hours, and individual noise events exceeding 45 dB(A) should be avoided.<sup>114</sup> The authors recommended that the governments adopt the guideline values as long-term targets, because the report acknowledged that about 30% of the population in European Union countries was exposed to night-time equivalent sound pressure levels exceeding 55 dB(A).<sup>117</sup>

95. In 2009, the World Health Organization issued an updated report on night noise guidelines for Europe. This report recommended a target nighttime noise guideline of 40 dB(A) as measured outdoors, averaged over one year; and an interim target of 55 dB(A) as measured outdoors, averaged over one year, for countries that could not achieve the target level in the short term.<sup>115</sup> This is an outdoor noise level, which would correspond to an indoor equivalent sound level of 15 dB(A) lower, assuming slightly open windows and some insulation in a dwelling.<sup>119</sup> The report encouraged member states in the European Union to gradually reduce the proportion of the population exposed to

<sup>114</sup> Goodhue County Brief at 14; Coalition for Sensible Siting Corrected Post-Hearing Memorandum at 6 (PUC "has no authority to question the County's basis or justification for its ordinances").

<sup>115</sup> See First Prehearing Order 1J 14 (Dec. 8, 2010).

<sup>116</sup> Ex. 24A at 4474,4480 (World Health Organization, *Guidelines for Community Noise*, Geneva 1999).

<sup>117</sup> Ex. 24A at 4467,4482,4555.

<sup>118</sup> Ex. 24A, Appendix at 63,184 (World Health Organization, *Night Noise Guidelines for Europe*, Geneva 2009)

<sup>119</sup> Ex. 24A, Appendix at 174

23

levels over the interim target level within the context of meeting wider sustainable development objectives.<sup>116</sup>

96. Based on the WHO reports, others have advocated even lower night-time noise limits for rural communities.<sup>118</sup>

97. The MPCA standards are consistent with the interim target levels recently recommended by the WHO; however, regardless of the recommendations made by the WHO or others, the MPCA standards are the law in the State of Minnesota regarding A-weighted noise levels, and local authorities may not specify other, more stringent, A-weighted noise standards, are not free to disregard them. The County's Ordinance does not specify more stringent A-weighted noise standards.

98. There is no evidence that turbines with shorter rotor diameters necessarily generate less or more noise or shadow flicker than those with longer rotor diameters. This was not addressed in the record. Different turbines with the same rotor diameter length have different maximum sound power levels, and the loudest

turbines are not necessarily those with the longest rotor diameters.<sup>122</sup>

99. The 10-RD setback is ~~an overbroad one~~ method of regulating both noise and shadow flicker because it would preclude the siting of wind turbines that meet state noise requirements and that are expected to generate relatively small amounts of shadow flicker for most homes in the project area, and extends the distance to one that the Minnesota Dept. of Health predicts would not generate complaints<sup>39</sup>.

100. The County's use of a 10-RD setback, as an indirect method of regulating noise, and does not describe the maximum levels of sound pressure which are more stringent with the MPCA and does not conflicts with Minn. Stat. § 116.07, Subd. 2, which delegates authority " to regulate noise solely to the MPCA and precludes local authorities from setting more stringent standards. If the operation of the project exceeds noise standards that are permitted, the Commission has the authority to address and ensure the resolution of any complaints.

101. Although the Commission ~~'s does not have~~ general wind permit standards, and Commission permitting practice does not directly address shadow flicker, the proposed site permit could include conditions to address potential problems with shadow flicker.<sup>123</sup> For example, in addition to requiring documentation of the Applicant's efforts to minimize shadow flicker impacts, the Commission could require the filing of a plan to mitigate any complaints related to shadow flicker, through methods such as landscaping or use of blackout shades. It is inequitable to expect that non-participating homeowners, in particular, should be wholly responsible for mitigating those complaints. ~~Such a permit condition would be a more targeted method of regulating potential problems with shadow flicker.~~

<sup>120</sup> Ex. 24A, Appendix at 184; Ex. 328, Vol. II, Tabs 1 & 2.

<sup>121</sup> Ex. 24A, Appendix at 5 (G.W. Kamperman and R.R. James, *The "How to" Guide to Siting Wind Turbines to Prevent Health Risks from Sound*, Oct. 2008).

<sup>122</sup> Ex. 9, Casey Surrebuttal at 1-2.

<sup>123</sup> See Minn. R. 7854.1000 (commission may include in a site permit conditions that are reasonable to protect the environment, enhance sustainable development, and promote the efficient use of resources). The Administrative Law Judge notes that the 11 homes that would be subject to more than 20 hours per year of shadow flicker might be considered subject to more than minimal amounts of flicker.

102. ~~For all the above reasons, The County Ordinance does not impermissibly impinge on the MPCA's sound regulating authority. The Ordinance is sufficiently specific to provide a rationale means of siting that would minimize impacts and resulting complaints about noise and flicker.~~ There is no good cause not to apply this section of the ordinance to the project.

<sup>39</sup> Public Health Impacts of Wind Turbines, Minnesota Dept. of Health (PUC Docket 08-945).

## **XVII. Motion to Strike.**

177. On April 6, 2011, the Applicant moved to strike the brief filed by the Coalition for Sensible Siting on the basis that it misstates facts, contains assertions of fact that are unsupported by the record, and was not timely filed.

178. In response to the motion, the Coalition for Sensible Siting submitted a corrected post-hearing memorandum on April 8, 2011, indicating that the inaccuracies in the first brief were due to its inability to pay for a transcript and that the late filing (by approximately four hours) resulted in no prejudice to any party. Goodhue Wind Truth also filed a letter supporting the receipt of the corrected memorandum.

179. The filing was late, but it caused no prejudice to the Applicant. Accordingly, the motion to strike is granted in part and denied in part as follows: The post-hearing memorandum filed by the Coalition for Sensible Siting on April 1, 2011, is struck from the record; and the corrected post-hearing memorandum filed by the Coalition for Sensible Siting on April 8, 2011, is deemed to be timely received.

Based on the above Findings of Fact and Conclusions, the Administrative Law Judge makes the following:

<sup>176</sup> Ex. 21, Attachment A at 12.

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Ellen Anderson  
David C. Boyd  
J. Dennis O'Brien  
Phyllis A. Reha  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

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

OAH: 3-2500-21662-2  
PUC: IP-6701/WS-08-1233

**PROPOSED ORDER**

Based on the Findings of Fact and Conclusions of Law modified herein and the entire record of this proceeding, the Commission hereby makes the following Order:

1. The findings, conclusions and recommendations contained in the Administrative Law Judge's Recommendation of are adopted except as modified above or as inconsistent with this Order.
2. The Commission defers deliberation and decision on the Certificate of Need and Siting Permit until a date to be set after the Notice of Order is issued and served on all the parties.

BY ORDER OF THE COMMISSION

Burl W. Haar,  
Executive Secretary



# **Exhibit A**

## **Affidavit of Ingrid Bjorklund, MOES**

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, 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**

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF RAMSEY )

**AFFIDAVIT OF INGRID E. BJORKLUND**

1. My name is Ingrid E. Bjorklund. I am presently employed by the Minnesota Department of Commerce Office of Energy Security (OES) as a State Permit Manager/Wind Permit Coordinator. I have held that position for one year. My job responsibilities include facilitating the implementation of Chapter 216F of the Minnesota Statutes, including administering all aspects of the permitting process for assigned large wind energy conversion system projects, coordinating study efforts and enabling county participation in order to ensure compliance with state statutes and rules.

2. Prior to joining the OES, I was employed by Outland Renewable Energy, LLC, a renewable energy company that developed wind projects, and also provided operation and maintenance for wind projects. In my position as Vice-President of Government Affairs and Associate General Counsel, I provided counsel on energy regulatory matters and general corporate transactional matters and developed and led lobbying initiatives. I also managed a project to build private transmission lines to support Outland's wind projects. In Minnesota, this was called the Minnesota Independence Line. I also worked at Lindquist & Vennum, P.L.L.P. for two years as an associate attorney. My practice there involved lobbying for energy companies, and general corporate law for the biofuel and wind industries.

3. My education includes a Bachelor of Arts degree in International Relations from the College of St. Catherine, a Master of Arts degree in Environmental and Resource Policy from

The George Washington University, and a Juris Doctorate degree from William Mitchell College of Law.

4. I was given the task of reviewing the legislative history for legislation passed in 2007 relating to county permitting authority with regard to wind siting and standards for Large Wind Energy Conversion Systems (LWECS). I reviewed the relevant materials on the official website of the Minnesota State Legislature, which included listening to the available audio recordings of legislative committee meetings. I summarize the information I reviewed, as follows:

5. The energy policy omnibus bill, otherwise known as the Next Generation Energy Act of 2007, was introduced in the Minnesota House of Representatives as HF 0436, with Representative Hilty as the lead sponsor. In the Minnesota Senate, the bill was introduced as SF 145 with Senator Prettner Solon as the lead sponsor.

6. In addition to its inclusion in the Next Generation Energy Act of 2007, county delegation language was introduced in a separate bill addressing Community-Based Energy Development (C-BED) projects, authored by Representative A. Peterson (HF 2253) and Senator Kubly (SF 2084). Neither of these bills made it through the committee process for a floor vote.

7. Instead, the omnibus energy bill (Next Generation Energy Act of 2007) became the vehicle for the county delegation language in addition to C-BED and numerous other energy-related provisions. The Next Generation Energy Act of 2007 as initially introduced included proposed Minn. Stat. § 216F.08, with the following provision as subdivision 1(h) contained in the statute relating to assumption of permit authority by counties:

**Subd. 1(h) Delegation to Counties.** A county may adopt by ordinance standards for LWECS that are more stringent than standards in commission rules or in the general permit standards. The commission, in considering a permit for LWECS in a county that has adopted more stringent standards, shall incorporate and apply those standards, unless the commission finds there is good cause not to do so.

8. Attached to my affidavit are copies of the relevant sections of the Next Generation Energy Act of 2007 as initially proposed in the House and in the Senate. *See* Exhibit A. Proposed section 216F.08 included a number of provisions addressing a county's responsibility for wind permits if it assumed responsibility for processing applications for permits for Large Wind Energy Conversion Systems ("LWECS") less than 25 megawatts ("MW") in nameplate capacity.

9. Because the Senate passed its omnibus energy policy bill before the House did, the House bill (HF 0436) moved through the process in both the house and the senate as SF 145. The Senate's Energy, Utilities, Technology and Communications Committee met numerous times to hear testimony and to discuss SF 145 beginning in January 2007, but motions were entertained on April 10 and 12 of 2007. The amendment described as the "A-2 amendment" to SF 145 was moved by Senator Prettner Solon and adopted on April 10, 2007. Senator Prettner Solon noted it was not an author's amendment. A copy of the A-2 amendment is attached to my affidavit as Exhibit B.

10. According to the audio recording of the April 10, 2007 hearing, the A-2 amendment was a “delete-all” amendment to SF 145 and included C-BED provisions and provisions for assumption of permitting authority by counties. The A-2 amendment is not available in the archives on the website of the Minnesota State Legislature, but I obtained a copy of it from the Legislative Reference Library. In addition, I obtained a copy of the relevant pages of the Revisor’s Full-Text Side-by-Side used by the conference committee to compare House and Senate versions of the bill. *See Exhibit C to my affidavit.*

11. The first engrossment of SF 145 incorporates motions adopted on April 10 and April 12, 2007. The first engrossment of SF 145 reflects a change in the county delegation language as originally introduced, and it appears as though the A-2 amendment made a change by splitting proposed section 216F.08 into two sections by removing section 216F.08, subd. 1(h), and placing the language from that section (i.e., subd. 1(h)) in the new proposed section 216F.081.

12. Further, the language of the above-quoted provision was slightly re-written in the A-2 amendment, replacing “general permit standards” with “the Commission’s permit standards” and changing the title of the section. Section 216F.08 in SF 145 directed the Commission to establish by order “general permit standards.” This change was not substantive, since the initial bill also directed the Commission to establish general permit standards. The language in its entirety in the first engrossment of SF 145 for section 216F.081 (under the heading “Application of County Standards”) is as follows:

**216F.081 Application of County Standards.** A county may adopt by ordinance standards for LWECs that are more stringent than standards in commission rules or in the commission’s permit standards. The commission, in considering a permit for LWECs in a county that has adopted more stringent standards, shall incorporate and apply those standards, unless the commission finds there is good cause not to do so.

13. The audio recording for the Senate Energy, Utilities, Technology and Communications Committee on April 10, 2007, includes a discussion of the A-2 amendment. Senator Prettner Solon described the A2 amendment, noting that SF 145 was the result of dozens of hours of work by stakeholder groups that focused their meetings on community-based energy development and global warming. She also noted that the A-2 amendment contains the two final pieces of a four pronged approach to reduce greenhouse gas emissions and to ensure that Minnesota’s economy and workforce benefit from energy legislation passed earlier that session. She described the first two pieces, which were passed separately. Senator Prettner Solon stated that the third piece, which is included in the A-2 amendment, “works to ensure community ownership and local benefits with regard to renewable energy development and operation.”

14. Senator Prettner Solon noted that Article 1 of the A-2 amendment would amend the existing C-BED statute. She further noted that the proposed amendment is the result of a stakeholder work group. Although Article 1 also contains sections 216F.08 and .081 regarding county delegation for LWECs up to 25 MW in size, the discussion in committee focused primarily on proposed changes to the C-BED statute.

15. Proposed sections 216F.08 and 216F.081 received little attention by the committee. Senator Prettner Solon described the sections by stating a workgroup consisting of small and large wind developers, the Department of Commerce, and counties developed sections relating to size determinations (section 7 of the amendment, making changes to Minn. Stat. § 216F.011) and permitting authority for certain wind generation projects by counties (sections 8 and 9 of the amendment, establishing new sections 216F.08 and 216F.081). In her description of the amendment, Senator Prettner Solon specifically stated:

Sections 8 and 9 allow counties that want to permit larger projects to permit projects up to 25 megawatts. Counties that don't want to aren't required to. And it also provides for uniform standards to be applied by either the state or the county in permitting these projects.

16. In committee discussion of Article 1 of the A-2 amendment, Mike Bull, the Assistant Commissioner of Renewable Energy and Advanced Technologies of the Department of Commerce, and Senator Prettner Solon were available to answer questions. Senator Prettner Solon stated that she had requested Mr. Bull's presence to assist her in answering committee questions. During a discussion of Article 1 of the A-2 amendment, Assistant Commissioner Bull responded to a question by Senator Olseen who inquired about a county's ability, through zoning, to prohibit wind turbines from being placed in areas such as lakeshore, which would be more restrictive than the state. Senator Olseen stated that in such a case, the state standard would then be a minimum and the county could be more restrictive.

17. Mr. Bull confirmed Senator Olseen's interpretation and added that the Commission will take under consideration more stringent standards *of counties that assume responsibility* for permitting wind generation projects up to 25 MW under proposed section 216F.08 when permitting projects 25 MW or larger, as agreed upon by the workgroup. Specifically, Mr. Bull responded:

"That's exactly right. And also, to the extent that counties opt in to decide to permit these projects under 25 megawatts they're also...have asked for, and the commission has agreed as within the workgroup, to say that the commission when siting projects larger than the 25 megawatts will look at the specific standards of that county for those projects and will work to...work with the county to apply...even though the state may have jurisdiction over the permitting for those larger projects, will work with the county...will take those more stringent standards into account when permitting."

18. There does not appear to be any explanation why the A-2 amendment separated the county delegation (now under the heading "Permit Authority; Assumption by Counties") and the application of county standards language into two sections (216F.08 and 216F.081). The provisions appear to have been separated without any public discussion. Mr. Bull's statement, and a statement by Senator Prettner Solon, as discussed below, appear to be the only public record on the matter. From the time the committee adopted the A-2 amendment, the provisions remained separated.

19. No public record exists with which to determine if there was any support for separation of the initial proposal or why the provisions were separated. The change was made outside the

public process. I assume that the person or persons who prepared the A-2 amendment made the change. This could have come from the Department of Commerce or from Senate counsel, or both. What is clear to me is that there is no indication in the legislative history that the A-2 amendment was meant to substantively change the section on county authority, which came from the workgroup as a provision that would allow stricter standards to be adopted for LWECS only by counties that also opt to assume authority over permitting LWECS up to 25,000 kilowatts.

20. The House version of the bill, which moved through the committee process under SF 145 (see unofficial engrossments for bill text), never separated the provisions regarding county delegation and application of county standards. Because the House and Senate versions of SF 145 differed, a conference committee was appointed, met, and prepared a conference committee report, dated May 19, 2007.

21. According to the audio recording for the conference committee on SF 145 on May 18, 2007, staff gave an overview of the House and Senate versions of SF 145 through review of the side-by-side (*see* Exhibit C), and made no mention of Section 9 beginning on line 5.23 in the senate version and (g) beginning on line 39.19 in the house version on page R37. The audio recording (part 3) for the conference committee on SF 145 on May 18, 2007, began with the conference committee already underway. Even though the first part of the sentence is missing from the audio recording, it is clear from the context that Section 9 on page R37 of the Senate version was adopted solely because the text of that provision was the same as the house version. The audio recording began with Senator Prettner Solon stating "...and what we've identified is sections 1, 3, 5, 7, 10, and 9 are virtually identical with perhaps the absence of an effective date, so we will be looking at adopting the Senate language on those." Representative Hilty moved adoption of the Senate language for sections 1, 3, 5, 7, 9, and 10 in the C-BED article of the side-by-side. Senator Prettner Solon reminded committee members that these sections are "virtually identical language with the exception of a start date." The conference committee's report was passed by both houses and became law. 2007 Minn. Laws 2829 (Chapter 136).

22. Based on my review of the audio recordings for the conference committee meetings on SF 145, I conclude that committee members did not intend Minn. Stat. § 216F.081 to apply to counties that did not undertake permitting responsibility of LWECS up to 25 MW. It is my opinion that Committee members did not perceive a difference between combining or separating the provisions in Minn. Stat. §§ 216F.08 and .081.

23. Based on my review of the legislative history, noted above, Mr. Bull accurately stated the intention of the stakeholder work groups as well as the likely intent of the statutory language that was finally enacted as Minn. Stat. § 216F.081. That is, that Minn. Stat. § 216F.081 was intended to require the Commission, in performing its duties to permit wind generation projects of 25 MW or larger located in counties that have chosen to undertake permitting responsibility for LWECS up to 25 MW, also to apply more stringent standards of counties (unless there is good cause not to apply them) when those counties have adopted the more stringent standards to apply to wind

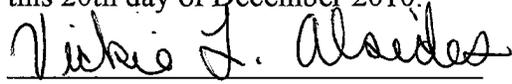
energy permitting applications up to 25 MW, for which the counties undertake permitting responsibility.

Further, your affiant sayeth not.

Dated: December 20, 2010

  
Ingrid E. Bjorklund

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



Vickie Lou Alsidis  
Notary Public

My Commission Expires 1/31/2015



1.1 A bill for an act  
 1.2 relating to energy; enacting the Next Generation Energy Act of 2007; establishing  
 1.3 state energy policy goals for fossil fuel-use reduction and renewable energy use;  
 1.4 providing for electric utility renewable energy obligations of 25 percent by 2025;  
 1.5 establishing provisions to promote community energy development; providing  
 1.6 for transition to an energy savings requirement for electric and natural gas  
 1.7 utilities; enacting provisions to address climate change; providing for delegation  
 1.8 to counties for permitting wind projects under 25 megawatts; amending  
 1.9 Minnesota Statutes 2006, sections 123B.65, subdivision 2; 216B.16, subdivisions  
 1.10 6b, 6c; 216B.1612, subdivision 2, by adding a subdivision; 216B.1691,  
 1.11 subdivisions 1, 2, 3, by adding subdivisions; 216B.2426; 216B.243, subdivisions  
 1.12 2, 3, 3a, 5; 216C.05; 216C.31; 471.345, subdivision 13; 504B.161, subdivision 1;  
 1.13 proposing coding for new law in Minnesota Statutes, chapters 216B; 216C; 216F;  
 1.14 repealing Minnesota Statutes 2006, sections 216B.165; 216B.241; 216B.2411;  
 1.15 216C.27; 216C.30, subdivision 5; Minnesota Rules, parts 4635.0110; 4635.0130;  
 1.16 7365.0210; 7635.0100; 7635.0120; 7635.0140; 7635.0150; 7635.0160;  
 1.17 7635.0170; 7635.0180; 7635.0200; 7635.0210; 7635.0220; 7635.0230;  
 1.18 7635.0240; 7635.0250; 7635.0260; 7635.0300; 7635.0310; 7635.0320;  
 1.19 7635.0330; 7635.0340; 7635.0400; 7635.0410; 7635.0420; 7635.0500;  
 1.20 7635.0510; 7635.0520; 7635.0530; 7635.0600; 7635.0610; 7635.0620;  
 1.21 7635.0630; 7635.0640; 7635.1000; 7635.1010; 7635.1020; 7635.1030;  
 1.22 7655.0100; 7655.0120; 7655.0200; 7655.0220; 7655.0230; 7655.0240;  
 1.23 7655.0250; 7655.0260; 7655.0270; 7655.0280; 7655.0290; 7655.0300;  
 1.24 7655.0310; 7655.0320; 7655.0330; 7655.0400; 7655.0410; 7655.0420.

1.25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.26 **ARTICLE 1**  
 1.27 **GENERAL PROVISIONS**

1.28 Section 1. **TITLE.**

1.29 This act may be cited as the Next Generation Energy Act of 2007.

25.1 Subd. 2. **Regional activities.** It shall be an executive branch responsibility to work  
25.2 with other states in the Midwest region to develop and implement a regional approach  
25.3 to reducing greenhouse gas emissions from activities in the region. The commissioner  
25.4 of commerce shall coordinate Minnesota's regional activities under this subdivision  
25.5 and report by February 1 of each year on the progress made and recommendations for  
25.6 further action.

25.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

25.8 **ARTICLE 6**  
25.9 **WIND PROJECT PERMITTING**

25.10 Section 1. **[216F.015] SIZE DETERMINATION.**

25.11 (a) The total size of a combination of wind energy conversion systems for the  
25.12 purpose of determining jurisdictional siting authority under sections 216F.01 to 216F.07  
25.13 must be determined according to this section. The nameplate capacity of one wind energy  
25.14 conversion system must be combined with the nameplate capacity of any other wind  
25.15 energy conversion system that is:

25.16 (1) located within five miles of the wind energy conversion system;

25.17 (2) constructed within the same 12-month period as the wind energy conversion  
25.18 system; and

25.19 (3) exhibits characteristics of being a single development, including but not limited  
25.20 to ownership structure, an umbrella sales arrangement, shared interconnection, revenue  
25.21 sharing arrangements, and common debt or equity financing.

25.22 (b) Upon written request of a project developer, the commissioner of commerce shall  
25.23 provide an initial written determination under this section within 30 days of receipt of the  
25.24 request and information necessary to develop a determination. The commissioner shall  
25.25 prepare and make available the necessary forms and guidance for project developers to  
25.26 make a request for determination. In the case of a dispute, the chair of the Public Utilities  
25.27 Commission shall determine the total size of the system and shall draw all reasonable  
25.28 inferences in favor of combining the systems.

25.29 (c) An application for a permit for a wind energy conversion system from a county is  
25.30 not complete without a jurisdictional determination made pursuant to this section.

25.31 Sec. 2. **[216F.08] DELEGATION TO COUNTIES.**

25.32 Subdivision 1. **Counties; processing of applications for LWECS site permits.**

25.33 (a) Any Minnesota county board may, by resolution and upon written notice to the Public

26.1 Utilities Commission, assume responsibility for processing applications for permits  
26.2 required under this chapter for LWECS with a combined nameplate capacity of less  
26.3 than 25,000 kilowatts. The responsibility for permit application processing, if assumed  
26.4 by a county, may be delegated by the county board to any appropriate county officer  
26.5 or employee. Processing by a county must be done in accordance with procedures and  
26.6 processes established under chapter 394.

26.7 (b) For the purposes of this subdivision, the term "processing" includes:

26.8 (1) the distribution to applicants of application and determination forms provided  
26.9 by the commission;

26.10 (2) the receipt and examination of completed application forms, and the certification,  
26.11 in writing, to the commission either (i) that the LWECS for which a permit was issued by  
26.12 the county will comply with applicable rules and standards, or (ii) if the facility will not  
26.13 comply, the respects in which a variance was required for the issuance of a permit; and

26.14 (3) rendering to applicants, upon request, assistance for the proper completion of  
26.15 an application.

26.16 (c) A county board that exercises its option under paragraph (a) and assumes  
26.17 responsibility for processing applications for permits for LWECS within its borders  
26.18 is responsible for issuing, denying, modifying, imposing conditions upon, or revoking  
26.19 permits pursuant to the provisions of this section or rules adopted pursuant to this section.  
26.20 The action of the county board with regard to that permit application is final, subject  
26.21 to appeal as provided in section 394.27.

26.22 (d) In adopting and enforcing rules or standards under this subdivision, the  
26.23 commission and the commissioner shall cooperate closely with the delegated county  
26.24 and other governmental agencies.

26.25 (e) The commission shall work with counties and wind developers to notify and  
26.26 educate stakeholders with regard to rules or standards under this section at the time such  
26.27 rules or standards are being developed and adopted and at least every two years thereafter.

26.28 (f) The commission shall, by order, develop general permit standards to cover  
26.29 requirements of site permits for LWECS pursuant to this section. These general permit  
26.30 standards shall apply both to permits issued by counties and to permits issued by the  
26.31 commission directly for LWECS with a combined nameplate capacity of less than 25,000  
26.32 kilowatts. The order shall outline minimum standards necessary to ensure the protection  
26.33 of human health and safety and wind resources on adjacent land. The initial order shall  
26.34 contain standards that are consistent with the general provisions of wind permits issued by  
26.35 the commission in the five years prior to enactment of this provision.

27.1 (g) The commission and the commissioner of commerce shall provide technical  
27.2 assistance to a delegated county with respect to the processing of LWECS site permit  
27.3 applications by that county.

27.4 (h) A county may adopt by ordinance standards for LWECS that are more stringent  
27.5 than standards in commission rules or in the general permit standards. The commission, in  
27.6 considering a permit for LWECS in a county that has adopted more stringent standards,  
27.7 shall incorporate and apply those more stringent standards, unless the commission finds  
27.8 there is good cause not to do so.

27.9 **Subd. 2. Notice of application for LWECS site permits; public participation.**

27.10 (a) A person who applies to a county board for a permit to construct or expand an LWECS  
27.11 under this section shall follow the same notification requirements as applicants seeking  
27.12 a permit from the commission.

27.13 (b) The county board shall provide for public participation commensurate with that  
27.14 afforded the public through the commission permitting process.

27.15 **Subd. 3. Wind turbine database.** Any county assuming responsibility for  
27.16 processing applications under this section shall provide the commission with an inventory  
27.17 of all permitted LWECS in a format suitable for incorporation into a statewide wind  
27.18 turbine database.

27.19 **EFFECTIVE DATE.** This section is effective January 15, 2008.

27.20 **ARTICLE 7**  
27.21 **MISCELLANEOUS PROVISIONS**

27.22 Section 1. Minnesota Statutes 2006, section 123B.65, subdivision 2, is amended to read:

27.23 **Subd. 2. Energy efficiency contract.** (a) Notwithstanding any law to the contrary,  
27.24 a school district may enter into a guaranteed energy savings contract with a qualified  
27.25 provider to significantly reduce energy or operating costs.

27.26 (b) Before entering into a contract under this subdivision, the board shall comply  
27.27 with clauses (1) to (5).

27.28 (1) The board must seek proposals from multiple qualified providers by publishing  
27.29 notice of the proposed guaranteed energy savings contract in the board's official newspaper  
27.30 and in other publications if the board determines that additional publication is necessary to  
27.31 notify multiple qualified providers.

27.32 (2) The school board must select the qualified provider that best meets the needs of  
27.33 the board. The board must provide public notice of the meeting at which it will select the  
27.34 qualified provider.



1.1 Senator ..... moves to amend S.F. No. 145 as follows:

Delete everything after the enacting clause and insert:

1.3 "ARTICLE 1

1.4 C-BED AND RELATED ISSUES

1.5 Section 1. Minnesota Statutes 2006, section 216B.1612, subdivision 1, is amended to  
1.6 read:

1.7 Subdivision 1. **Tariff establishment.** A tariff shall be established to optimize local,  
1.8 regional, and state benefits from ~~wind~~ renewable energy development and to facilitate  
1.9 widespread development of community-based ~~wind~~ renewable energy projects throughout  
1.10 Minnesota.

1.11 Sec. 2. Minnesota Statutes 2006, section 216B.1612, subdivision 2, is amended to read:

1.12 Subd. 2. **Definitions.** (a) The terms used in this section have the meanings given  
1.13 them in this subdivision.

1.14 (b) "C-BED tariff" or "tariff" means a community-based energy development tariff.

1.15 (c) "Qualifying owner" means:

1.16 (1) a Minnesota resident;

1.17 (2) a limited liability company that is organized under ~~the laws of this state~~ chapter  
1.18 322B and that is made up of members who are Minnesota residents;

1.19 (3) a Minnesota nonprofit organization organized under chapter 317A;

1.20 (4) a Minnesota cooperative association organized under chapter 308A or 308B,  
1.21 ~~other than including~~ a rural electric cooperative association or a generation and  
1.22 transmission cooperative on behalf of and at the request of a member distribution utility;

1.23 (5) a Minnesota political subdivision or local government ~~other than including,~~  
1.24 but not limited to, a municipal electric utility, or a municipal power agency on behalf  
1.25 of and at the request of a member distribution utility, including, but not limited to, a  
1.26 county, statutory or home rule charter city, town, school district, or public or private  
1.27 higher education institution or any other local or regional governmental organization such  
1.28 as a board, commission, or association; or

1.29 (6) a tribal council.

1.30 (d) "Net present value rate" means a rate equal to the net present value of the  
1.31 nominal payments to a project divided by the total expected energy production of the  
1.32 project over the life of its power purchase agreement.

1.33 (e) "Standard reliability criteria" means:

1.34 (1) can be safely integrated into and operated within the utility's grid without causing  
1.35 any adverse or unsafe consequences; and

2.1 (2) is consistent with the utility's resource needs as identified in its most recent  
2.2 resource plan submitted under section 216B.2422.

2.3 (f) "Renewable" refers to a technology listed in section 216B.1691, subdivision 1,  
2.4 paragraph (a).

2.5 ~~(f)~~ (g) "Community-based energy development project" or "C-BED project" means  
2.6 a new ~~wind~~ renewable energy project that either as a stand-alone project or part of a  
2.7 partnership under subdivision 8:

2.8 (1) has no single qualifying owner owning more than 15 percent of a C-BED wind  
2.9 energy project that consists of more than two turbines; or unless: (i) the C-BED wind  
2.10 energy project consists of only one or two turbines; or (ii) the qualifying owner is a public  
2.11 entity listed under paragraph (b), clause (5), that is not a municipal utility;

2.12 (2) ~~for C-BED projects of one or two turbines, is owned entirely by one or more~~  
2.13 ~~qualifying owners, with~~ demonstrates that at least 51 percent of the total financial benefits  
2.14 over the life of the project ~~flowing will flow~~ to qualifying owners; and

2.15 (3) has a resolution of support adopted by the county board of each county in which  
2.16 the project is to be located, or in the case of a project located within the boundaries of a  
2.17 reservation, the tribal council for that reservation.

2.18 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.19 Sec. 3. Minnesota Statutes 2006, section 216B.1612, subdivision 3, is amended to read:

2.20 Subd. 3. **Tariff rate.** (a) The tariff described in subdivision 4 must have a rate  
2.21 schedule that allows for a rate ~~up to a 2.7 cents per kilowatt-hour~~ net present value rate  
2.22 over the 20-year life of the power purchase agreement. The tariff must provide for a rate  
2.23 that is higher in the first ten years of the power purchase agreement than in the last ten  
2.24 years. The discount rate required to calculate the net present value must be the utility's  
2.25 normal discount rate used for its other business purposes.

2.26 (b) The commission shall consider mechanisms to encourage the aggregation  
2.27 of C-BED projects.

2.28 (c) The commission shall require that qualifying and nonqualifying owners provide  
2.29 sufficient security to secure performance under the power purchase agreement, and shall  
2.30 prohibit the transfer of the C-BED project to a nonqualifying owner during the initial  
2.31 20 years of the contract.

2.32 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.33 Sec. 4. Minnesota Statutes 2006, section 216B.1612, subdivision 5, is amended to read:

2.34 Subd. 5. **Priority for C-BED projects.** (a) A utility subject to section 216B.1691  
2.35 that needs to construct new generation, or purchase the output from new generation, as

3.1 part of its plan to satisfy its good faith objective or standard under that section should take  
3.2 reasonable steps to determine if one or more C-BED projects are available that meet the  
utility's cost and reliability requirements, applying standard reliability criteria, to fulfill  
3.4 some or all of the identified need at minimal impact to customer rates.

3.5 Nothing in this section shall be construed to obligate a utility to enter into a power  
3.6 purchase agreement under a C-BED tariff developed under this section.

3.7 (b) Each utility shall include in its resource plan submitted under section 216B.2422  
3.8 a description of its efforts to purchase energy from C-BED projects, including a list of the  
3.9 projects under contract and the amount of C-BED energy purchased.

3.10 (c) The commission shall consider the efforts and activities of a utility to purchase  
3.11 energy from C-BED projects when evaluating its good faith effort towards meeting the  
3.12 renewable energy objective under section 216B.1691.

3.13 Sec. 5. Minnesota Statutes 2006, section 216B.1612, is amended by adding a  
3.14 subdivision to read:

3.15 Subd. 8. Community energy partnerships. A utility providing electric service  
3.16 to retail or wholesale customers in Minnesota and an independent power producer may,  
3.17 subject to the limits specified in this section, participate in a community-based energy  
3.18 project, including as an owner, equity partner, or provider of technical or financial  
3.19 assistance.

3.20 EFFECTIVE DATE. This section is effective the day following final enactment.

3.21 Sec. 6. Minnesota Statutes 2006, section 216B.1691, is amended by adding a  
3.22 subdivision to read:

3.23 Subd. 7. Utility acquisition of resources. A competitive resource acquisition  
3.24 process established by the commission prior to June 1, 2007, shall not apply to a utility  
3.25 for the construction, ownership, and operation of generation facilities used to satisfy the  
3.26 requirements of this section unless the commission issues an order on or after June 1,  
3.27 2007, that requires compliance by a utility with a competitive resource acquisition process.

3.28 Sec. 7. [216F.011] SIZE DETERMINATION.

3.29 (a) The total size of a combination of wind energy conversion systems for the  
3.30 purpose of determining what jurisdiction has siting authority under this chapter must  
3.31 be determined according to this section. The nameplate capacity of one wind energy  
3.32 conversion system must be combined with the nameplate capacity of any other wind  
3 energy conversion system that is:

3.34 (1) located within five miles of the wind energy conversion system;

4.1 (2) constructed within the same 12-month period as the wind energy conversion  
4.2 system; and

4.3 (3) exhibits characteristics of being a single development, including but not limited  
4.4 to ownership structure, an umbrella sales arrangement, shared interconnection, revenue  
4.5 sharing arrangements, and common debt or equity financing.

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

4.12 (c) An application to a county for a permit under this chapter for a wind energy  
4.13 conversion system is not complete without a size determination made under this section.

4.14 **EFFECTIVE DATE.** This section is effective January 15, 2008.

4.15 **Sec. 8. [216F.08] PERMIT AUTHORITY; ASSUMPTION BY COUNTIES.**

4.16 (a) A county board may, by resolution and upon written notice to the Public Utilities  
4.17 Commission, assume responsibility for processing applications for permits required  
4.18 under this chapter for LWECs with a combined nameplate capacity of less than 25,000  
4.19 kilowatts. The responsibility for permit application processing, if assumed by a county,  
4.20 may be delegated by the county board to an appropriate county officer or employee.  
4.21 Processing by a county shall be done in accordance with procedures and processes  
4.22 established under chapter 394.

4.23 (b) A county board that exercises its option under paragraph (a) may issue, deny,  
4.24 modify, impose conditions upon, or revoke permits pursuant to this section. The action  
4.25 of the county board about a permit application is final, subject to appeal as provided  
4.26 in section 394.27.

4.27 (c) The commission shall, by order, establish general permit standards, including  
4.28 appropriate property line set-backs, governing site permits for LWECs under this section.  
4.29 The order must consider existing and historic commission standards for wind permits  
4.30 issued by the commission. The general permit standards shall apply to permits issued by  
4.31 counties and to permits issued by the commission for LWECs with a combined nameplate  
4.32 capacity of less than 25,000 kilowatts. The commission or a county may grant a variance  
4.33 from a general permit standard if the variance is found to be in the public interest.

4.34 (d) The commission and the commissioner of commerce shall provide technical  
4.35 assistance to a county with respect to the processing of LWECs site permit applications.

5.1 EFFECTIVE DATE. This section is effective January 15, 2008.

5.2 Sec. 9. [216F.081] APPLICATION OF COUNTY STANDARDS.

5.3 A county may adopt by ordinance standards for LWECs that are more stringent than  
5.4 standards in commission rules or in the commission's permit standards. The commission,  
5.5 in considering a permit application for LWECs in a county that has adopted more stringent  
5.6 standards, shall consider and apply those more-stringent standards, unless the commission  
5.7 finds good cause not to apply the standards.

5.8 Sec. 10. STATEWIDE STUDY OF DISPERSED GENERATION POTENTIAL.

5.9 Subdivision 1. Definition. "Dispersed generation" means an electric generation  
5.10 project with a generating capacity between ten and 40 megawatts that utilizes an "eligible  
5.11 energy technology," as defined in Minnesota Statutes, section 216B.1691, subdivision 1,  
5.12 paragraph (a).

3 Subd. 2. Study participants. Each electric utility subject to Minnesota Statutes,  
5.14 section 216B.1691, must participate collaboratively in conducting a two-phase study of  
5.15 the potential for dispersed generation projects that can be developed in Minnesota.

5.16 Subd. 3. First phase study content; report. In the first phase of the study,  
5.17 participants must analyze the impacts of the addition of a total of 600 megawatts of  
5.18 new dispersed generation projects distributed among the following Minnesota electric  
5.19 transmission planning zones: the Northeast zone, the Northwest zone, the Southeast  
5.20 zone, the Southwest zone, and the West-Central zone. Study participants must use a  
5.21 generally accepted 2010 year transmission system model including all transmission  
5.22 facilities expected to be operating in 2010. The study must take into consideration  
5.23 regional projected load growth, planned changes in the bulk transmission network, and the  
5.24 long-range transmission conceptual plan being developed under Laws 2007, chapter 3,  
5.25 section 2. In determining locations for the installation of dispersed generation projects  
5.26 that consist of wind energy conversion systems, the study should consider, at a minimum,  
5.27 wind resource availability, existing and contracted wind projects, and current dispersed  
5.28 generation projects in the Midwest Independent System Operator interconnection queue.  
5.29 The study must analyze the impacts of individual projects and all projects in aggregate on  
5.30 the transmission system, and identify specific modifications to the transmission system  
5.31 necessary to remedy any problems caused by the installation of dispersed generation  
5.32 projects, including cost estimates for the modifications. The study must analyze the  
3 additional dispersed generation projects connected at the lowest voltage level transmission  
5.34 that exists in the vicinity of the projected generation sites. A preliminary analysis to  
5.35 identify transmission system problems must be conducted with the projects installed at

6.1 initially selected locations. The technical review committee may, after reviewing the  
6.2 locations selected for installation, recommend moving the installation sites once to new  
6.3 locations to reduce undesirable transmission system impacts. The commissioner of  
6.4 commerce must submit a report containing the findings and recommendations of the first  
6.5 phase of the study to the commission no later than June 15, 2008.

6.6 Subd. 4. Second phase study content; report. In the second phase of the study,  
6.7 participants must analyze the impacts of an additional total of 600 megawatts of dispersed  
6.8 generation projects installed among the five transmission planning zones, or a higher total  
6.9 capacity amount if agreed to by both the utilities and the technical review committee. The  
6.10 utilities must employ an analysis method similar to that used in the first phase of the study,  
6.11 and must use the most recent information available, including information developed in  
6.12 the first phase. The second phase of the study must use a generally accepted 2013 year  
6.13 transmission system model including all transmission facilities that are expected to be  
6.14 in-service at that time. The commissioner of commerce must submit a report containing  
6.15 the findings and recommendations of the second phase of the study to the commission no  
6.16 later than September 15, 2009.

6.17 Subd. 5. Technical review committee. Prior to the start of the first phase of  
6.18 the study, the commissioner of commerce must appoint a technical review committee  
6.19 consisting of between ten and 15 individuals with experience and expertise in electric  
6.20 transmission system engineering, renewable energy generation technology, and dispersed  
6.21 generation project development, including representatives from the federal Department  
6.22 of Energy, the Midwest Independent System Operator, and stakeholder interests. The  
6.23 technical review committee must oversee both phases of the study, and must:

6.24 (1) make recommendations to the utilities regarding the proposed methods and  
6.25 assumptions to be used in the technical study;

6.26 (2) in conjunction with the appropriate utilities, hold public meetings on each  
6.27 phase of the study in each electricity transmission planning zone prior to the beginning  
6.28 of each phase of study, after the impact analysis is completed, and when a draft final  
6.29 report is available;

6.30 (3) establish procedures for handling commercially sensitive information; and

6.31 (4) review the initial and final drafts of the study and make recommendations for  
6.32 improvement, including problems associated with the interconnections among utility  
6.33 systems that may be amenable to solution through cooperation between the utilities in each  
6.34 zone. During each phase of the study, the technical review committee may recommend  
6.35 that the installation of dispersed generation projects be moved to new locations that cause  
6.36 fewer undesirable transmission system impacts.

7.1 **Sec. 11. WIND DEVELOPMENT PROPERTY AGREEMENTS; STUDY.**

7.2 The Legislative Electric Energy Task Force shall study whether the state should  
7.3 regulate easements, leases, and other agreements to acquire an interest in real property  
7.4 for the purpose of wind energy development. The purpose of the study is to determine  
7.5 whether the duration and other terms of those interests should be limited to promote  
7.6 wind energy development. The task force must report the results of its study and any  
7.7 recommendations to the chairs of the energy finance and policy committees of the  
7.8 legislature by February 1, 2008.

7.9 **ARTICLE 2**

7.10 **GLOBAL CLIMATE CHANGE; GREENHOUSE GAS EMISSIONS**

7.11 **Section 1. GREENHOUSE GAS EMISSIONS.**

7.12 Subdivision 1. **Greenhouse gas emissions reduction goal.** (a) It is the goal of the  
7.13 state to reduce statewide greenhouse gas emissions across all sectors producing those  
7.14 emissions to a level at least 80 percent below 2005 levels by 2050.

7.15 (b) For purposes of this section, statewide greenhouse gas emissions  
7.16 include emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,  
7.17 perfluorocarbons, and sulfur hexafluoride emitted by anthropogenic sources within the  
7.18 state and from the generation of electricity imported from outside the state and consumed  
7.19 in Minnesota. Carbon dioxide that is injected into geological formations to prevent  
7.20 its release to the atmosphere in compliance with applicable laws, and carbon dioxide  
7.21 associated with the combustion of fuels other than coal, petroleum, and natural gas are not  
7.22 counted as contributing to statewide greenhouse gas emissions.

7.23 Subd. 2. **Climate change action plan.** By February 1, 2008, the commissioner  
7.24 of commerce, in consultation with the commissioners of the Pollution Control Agency  
7.25 and the Departments of Natural Resources, Housing Finance Agency, Agriculture,  
7.26 Employment and Economic Development, and Transportation, and the chair of the  
7.27 Metropolitan Council, shall submit to the legislature a climate change action plan that  
7.28 meets the requirements of this section.

7.29 Subd. 3. **Stakeholder process.** The plan required by subdivision 2 must be  
7.30 developed through a structured, broadly inclusive stakeholder-based review of potential  
7.31 policies and initiatives that will reduce statewide greenhouse gas emissions from a  
7.32 broad range of sources and activities. The commissioner shall engage a nationally  
7.33 recognized independent expert entity to conduct the stakeholder process. The report of  
7.34 the stakeholder process must form the basis for the plan submitted by the commissioner  
7.35 under subdivision 2.

8.1 Subd. 4. General elements of the plan. The plan must:

8.2 (1) estimate 1990 and 2005 greenhouse gas emissions in the state and make  
8.3 projections of emissions in 2015, 2025, and 2050;

8.4 (2) identify, evaluate, and integrate a broad range of statewide greenhouse gas  
8.5 reduction options for all emission sectors in the state;

8.6 (3) assess the costs, benefits, and feasibility of implementing the options; and

8.7 (4) recommend an integrated set of reduction options and strategies for implementing  
8.8 the options that will achieve the goal in subdivision 1 and interim goals recommended  
8.9 under subdivision 5, including analysis of the associated costs and benefits to Minnesotans.

8.10 Subd. 5. Specific plan requirements. (a) The plan must evaluate and recommend  
8.11 interim goals as steps to achieve the goal in subdivision 1. At a minimum, the plan must  
8.12 evaluate and recommend the efficacy of reducing statewide greenhouse gas emissions to  
8.13 a level at least 15 percent below 2005 emission levels by 2015 and to a level at least 30  
8.14 percent below 2005 emission levels by 2025.

8.15 (b) The plan must determine the feasibility, assess the costs and benefits, and  
8.16 recommend whether the state should adopt a regulatory system that imposes a cap on the  
8.17 aggregate air pollutant emissions of a group of sources, requires those subject to the cap to  
8.18 own an allowance for each ton of the air pollutant emitted, and allows for market-based  
8.19 trading of those allowances. The evaluation must consider the ramifications of the state  
8.20 implementing a cap and trade system alone, in coordination with other states, and as a  
8.21 requirement of federal law applying to all states. The plan must recommend the parameters  
8.22 of a cap and trade system that includes a cap that would prevent significant increases  
8.23 in greenhouse gas emissions above current levels with a schedule for lowering the cap  
8.24 periodically to achieve the goal in subdivision 1 and interim goals recommended under  
8.25 paragraph (a). The evaluation must consider rate impacts on energy consumers in the state.

8.26 (c) The plan must include recommendations for improvements in the emissions  
8.27 inventory and recommend whether the state should require greenhouse gas emissions  
8.28 reporting from specific sources and, if so, which sources should be required to report. The  
8.29 plan must also evaluate options for an emissions registry after reviewing registries in other  
8.30 states and recommend a registry that will insure the greatest opportunity for Minnesota  
8.31 entities to obtain marketable credits.

8.32 Subd. 6. Regional activities. The state must, with other states in the Midwest  
8.33 region, develop and implement a regional approach to reducing greenhouse gas emissions  
8.34 from activities in the region, including consulting on a regional cap and trade system.  
8.35 The commissioner of commerce shall coordinate Minnesota's regional activities under  
8.36 this subdivision and report to the legislative committees in the senate and house of

9.1 representatives with jurisdiction over energy and environmental policy by February 1,  
9.2 2008, and February 1, 2009, on the progress made and recommendations for further  
action."

9.4 Delete the title and insert:

9.5 "A bill for an act

9.6 relating to energy; providing for community-based energy development;  
9.7 requiring a plan to reduce greenhouse gas emissions; amending Minnesota  
9.8 Statutes 2006, sections 216B.1612, subdivisions 1, 2, 3, 5, by adding a  
9.9 subdivision; 216B.1691, by adding a subdivision; proposing coding for new law  
9.10 in Minnesota Statutes, chapter 216F."

37.18 commission and the department by other law.

37.19 Subd. 3. Assessment and appropriation. In addition to the amount noted in 37.20 subdivision 2, the commissioner may assess utilities, using the mechanism 37.21 specified in that subdivision, up to an additional \$500,000 annually through June 30, 37.22 2008. The amounts assessed under this subdivision are appropriated to the commissioner 37.23 commissioner, and some or all of the amounts assessed may be transferred to the 37.24 commissioner of administration, for the purposes specified in section 16B.325 and Laws 37.25 2001, chapter 212, article 1, section 3, as needed to implement those sections.

37.26 Subd. 4. Expiration. Subdivisions 1 and 2 expire June 30, 2007 2012. Subdivision 37.27 3 expires June 30, 2008.

4.12 Sec. 7. [216F.011] SIZE DETERMINATION.

4.13 (a) The total size of a combination of wind energy conversion systems for the 4.14 purpose of determining what jurisdiction has siting authority under this chapter must 4.15 be determined according to this section. The nameplate capacity of one wind energy 4.16 conversion system must be combined with the nameplate capacity of any other wind 4.17 energy conversion system that:

4.18 (1) is located within five miles of the wind energy conversion system;

4.19 (2) is constructed within the same 12-month period as the wind energy conversion 4.20 system; and

4.21 (3) exhibits characteristics of being a single development, including, but not limited 4.22 to, ownership structure, an umbrella sales arrangement, shared interconnection, revenue 4.23 sharing arrangements, and common debt or equity financing.

4.24 (b) The commissioner shall provide forms and assistance for project developers to 4.25 make a request for a size determination. Upon written request of a project developer, the 4.26 commissioner of commerce shall provide a written size determination within 30 days 4.27 of receipt of the request and of any information requested by the commissioner. In the 4.28 case of a dispute, the chair of the Public Utilities Commission shall make the final size 4.29 determination.

4.30 (c) An application to a county for a permit under this chapter for a wind energy 4.31 conversion system is not complete without a size determination made under this section.

4.32 EFFECTIVE DATE. This section is effective January 15, 2008.

5.1 Sec. 8. [216F.08] PERMIT AUTHORITY; ASSUMPTION BY COUNTIES.

37.28 Sec. 8. [216F.011] SIZE DETERMINATION.

37.29 (a) The total size of a combination of wind energy conversion systems for the 37.30 purpose of determining jurisdictional siting authority under sections 216F.01 to 216F.07 37.31 must be determined according to this section. The nameplate capacity of one wind energy 37.32 conversion system must be combined with the nameplate capacity of any other wind 37.33 energy conversion system that:

37.34 (1) is located within five miles of the wind energy conversion system;

38.1 (2) is constructed within the same 12-month period as the wind energy conversion 38.2 system; and

38.3 (3) exhibits characteristics of being a single development, including but not limited 38.4 to, ownership structure, an umbrella sales arrangement, shared interconnection, revenue 38.5 sharing arrangements, and common debt or equity financing.

38.6 (b) The commissioner shall prepare and make available the necessary forms and 38.7 guidance for project developers to make a request for determination. Upon written 38.8 request of a project developer, the commissioner of commerce shall provide a written 38.9 determination under this section within 30 days of receipt of the request and information 38.10 necessary to make a determination. In the case of a dispute, the chair of the Public Utilities 38.11 Commission shall determine the total size of the system and shall draw all reasonable 38.12 inferences in favor of combining the systems.

38.13 (c) An application to a county for a permit for a wind energy conversion system is 38.14 not complete without a jurisdictional determination made under this section.

38.15 Sec. 9. [216F.08] PERMIT AUTHORITY; ASSUMPTION BY COUNTIES.



38.16 Subdivision 1. Definition. For the purposes of this subdivision, the term "processing" means:

- 38.17 (1) the distribution to applicants of application and determination forms provided by the commission;
- 38.18 (2) the receipt and examination of completed application forms, and the certification, in writing, to the commission either that the LWECs for which a permit was issued by the county will comply with applicable rules and standards or, if the facility will not comply, the respects in which a variance is required for the issuance of a permit; and
- 38.19 (3) rendering to applicants, upon request, assistance for the proper completion of an application.

- 5.2 (a) A county board may, by resolution and upon written notice to the Public Utilities Commission, assume responsibility for processing applications for permits required under this chapter for LWECs with a combined nameplate capacity of less than 25,000 kilowatts. The responsibility for permit application processing, if assumed by a county, may be delegated by the county board to an appropriate county officer or employee.
- 5.3 Processing by a county shall be done in accordance with procedures and processes established under chapter 394.

- 5.4 (b) A county board that exercises its option under paragraph (a) may issue, deny, modify, impose conditions upon, or revoke permits pursuant to this section. The action of the county board about a permit application is final, subject to appeal as provided in section 394.27.

- 5.5 (c) The commission shall, by order, establish general permit standards, including appropriate property line set-backs, governing site permits for LWECs under this section. The order must consider existing and historic commission standards for wind permits issued by the commission. The general permit standards shall apply to permits issued by counties and to permits issued by the commission for LWECs with a combined nameplate capacity of less than 25,000 kilowatts. The commission or a county may grant a variance from a general permit standard if the variance is found to be in the public interest.
- 5.6 (d) The commission and the commissioner of commerce shall provide technical assistance to a county with respect to the processing of LWECs site permit applications.

- 38.20 Subd. 2. Counties processing applications for LWECs site permits. (a) Any Minnesota county board may, by resolution and upon written notice to the Public Utilities Commission, assume responsibility for processing applications for permits required under this chapter for LWECs with a combined nameplate capacity of less than 25,000 kilowatts. The responsibility for permit application processing, if assumed by a county, may be delegated by the county board to an appropriate county officer or employee.
- 38.21 Processing by a county must be done in accordance with procedures and processes established under chapter 394.

- 38.22 (b) A county board that exercises its option under paragraph (a) and assumes responsibility for processing applications for permits for LWECs within its borders is responsible for issuing, denying, modifying, imposing conditions upon, or revoking permits under this section or rules adopted pursuant to it. The action of the county board with regard to a permit application is final, subject to appeal as provided in section 394.27.

- 38.23 (c) In adopting and enforcing rules or standards under this subdivision, the commission shall cooperate closely with counties and other governmental agencies.
- 38.24 (d) The commission shall work with counties and wind developers to notify and educate stakeholders with regard to rules or standards under this section at the time the rules or standards are being developed and adopted and at least every two years thereafter.

- 38.25 (e) The commission shall, by order, establish general permit standards governing site permits for LWECs under this section. These general permit standards must apply both to permits issued by counties and to permits issued by the commission directly for LWECs with a combined nameplate capacity of less than 25,000 kilowatts. The order must contain minimum standards necessary to ensure the protection of human health and safety and wind resources on adjacent land and must be consistent with the general provisions of wind permits issued by the commission in the five years prior to enactment of this provision.
- 38.26 (f) The commission and the commissioner of commerce shall provide technical assistance to a county with respect to the processing of LWECs site permit applications by the county.

39.19 (g) A county may adopt by ordinance standards for LWECs that are more stringent  
 39.20 than standards in commission rules or in the commission's permit standards. The  
 39.21 commission, in considering a permit for LWECs in a county that has adopted more  
 39.22 stringent standards, shall incorporate and apply those more stringent standards, unless the  
 39.23 commission finds there is good cause not to do so.

5.22 EFFECTIVE DATE. This section is effective January 15, 2008.

5.23 Sec. 9. [216R081] APPLICATION OF COUNTY STANDARDS.

5.24 A county may adopt by ordinance standards for LWECs that are more stringent than  
 5.25 standards in commission rules or in the commission's permit standards. The commission,  
 5.26 in considering a permit application for LWECs in a county that has adopted more stringent  
 5.27 standards, shall consider and apply those more stringent standards, unless the commission  
 5.28 finds good cause not to apply the standards.

39.24 Sec. 10. Minnesota Statutes 2006, section 500.30, subdivision 2, is amended to read:

39.25 Subd. 2. Like any conveyance. Any property owner may grant a solar or wind  
 39.26 easement in the same manner and with the same effect as a conveyance of an interest in  
 39.27 real property. The easements shall be created in writing and shall be filed, duly recorded,  
 39.28 and indexed in the office of the recorder of the county in which the easement is granted.  
 39.29 No duly recorded easement shall be unenforceable on account of lack of privity of estate or  
 39.30 privity of contract; such easements shall run with the land or lands benefited and burdened  
 39.31 and shall constitute a perpetual easement, except that an easement may terminate upon the  
 39.32 conditions stated therein or pursuant to the provisions of section 500.20. A wind easement  
 39.33 or lease of wind rights shall also terminate after five years from the date the easement is  
 39.34 created or lease is entered into, if a wind energy project on the property to which the  
 39.35 easement or lease applies does not begin commercial operation within the five-year period.

40.1 EFFECTIVE DATE. This section is effective the day following final enactment.  
 40.2 and applies to wind easements created and wind rights leases entered into on and after  
 40.3 the effective date of this section.

40.4 Sec. 11. STATEWIDE STUDY OF DISPERSED GENERATION POTENTIAL.

40.5 Subdivision 1. Definition. "Dispersed generation" means an electric generation  
 40.6 project with a generating capacity between ten and 40 megawatts that utilizes an eligible  
 40.7 energy technology, as defined in Minnesota Statutes, section 216B.1691, subdivision 1,  
 40.8 paragraph (a).

5.29 Sec. 10. STATEWIDE STUDY OF DISPERSED GENERATION POTENTIAL.

5.30 Subdivision 1. Definition. "Dispersed generation" means an electric generation  
 5.31 project with a generating capacity between ten and 40 megawatts that utilizes an "eligible  
 5.32 energy technology," as defined in Minnesota Statutes, section 216B.1691, subdivision 1,  
 5.33 paragraph (a).

# **Exhibit B**

## **Affidavit of Deborah Pile, MOES**

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

---

<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.

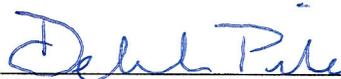
16. The Commission speaks through its orders. To date, the OES EFP is unaware that the Commission has considered legal arguments or issued a formal order interpreting section 216F.081. However, the November 2, 2010 order referring this matter to the Office of Administrative Hearings may imply a request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

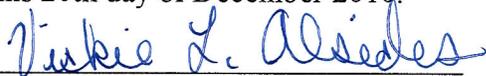
Further, your affiant sayeth not.

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



# **Exhibit C**

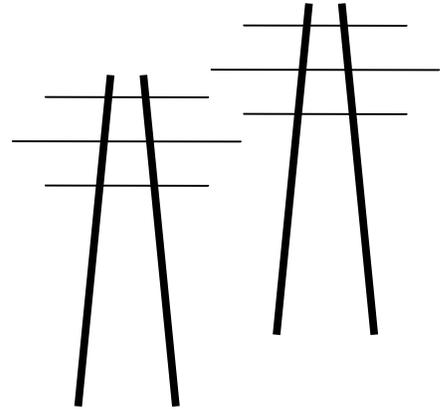
## **Goodhue Wind Truth Subpoena Request**

# Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617  
Energy Consultant—Transmission, Power Plants, Nuclear Waste  
overland@legalelectric.org

P. O. Box 176  
Red Wing, Minnesota 55066  
612.227.8638

P.O. Box 69  
Port Penn, Delaware 19731  
302.834.3466



February 23, 2011

Kathleen Sheehy  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, MN 55164-0620

RE: Subpoena Requests  
In the Matter of the Application of Goodhue Wind, LLC for a Certificate of Need  
and Siting Permit  
OAH Docket: 3-2500-21662-2; MPUC Docket No.: IP-6701/WS-08-1233

Dear Judge Sheehy:

Attached please find subpoena requests for Ingrid E. Bjorklund and Michael J. Bull in the above-entitled matter.

These subpoenas are being requested based on the Affidavits submitted by MOES' Deborah Pile and Ingrid Bjorklund regarding legislative intent. Those Affidavits were eFiled and entered in the record of this proceeding and should be subject to cross-examination. In addition, both MOES and Applicants relied heavily on statements by Michael Bull, then of the Department of Commerce/Governor's Office, and their characterization is hearsay. Though the administrative rules are more lax regarding hearsay, Michael Bull's testimony is necessary.

Thank you for your consideration of these requests.

Very truly yours,

Carol A. Overland  
for  
Goodhue Wind Truth

cc: eFiled & eServed

<b>OFFICE OF ADMINISTRATIVE HEARINGS</b> P.O. Box 64620, St Paul, MN 55164-0620 Phone: (651) 361-7900 Fax: (651)361-7900		<b>SUBPOENA REQUEST FORM</b> Minn Rule Pt. 1405.1300; 1400.7000 OAH Docket 3-2500-21662-2  Request Date: February 23, 2011
<b>Name of Judge:</b> Kathleen Sheehy	<b>Type of Subpoena</b> Hearing testimony & documents Information re: Statements in Affidavit of 12/20/10	

IN THE MATTER OF THE APPLICATION OF  
GOODHUE WIND, LLC...

OAH Docket 3-2500-21662-2  
MPUC Docket No.: IP-6701/WS-08-1233

Requesting Party or Attorney	Person Being Served
Carol A. Overland, Intervenor Goodhue Wind Truth OVERLAND LAW OFFICE - Legalectric P.O. Box 176 Red Wing, MN 55066 (612) 227-8638 overland@legalectric.org	Ingrid E. Bjorklund State Permit Manager/Wind Permit Coordinator Minnesota Dept. of Commerce 85 – 7 <sup>th</sup> Place East, Suite 500 St. Paul, MN 55101 800-657-3794

**Date and Location for Testimony in Evidentiary Hearing:**

Date: March 17 or 16, time certain to be arranged  
Location: Public Utilities Commission, LargeHrg. Rm., 121 – 7<sup>th</sup> Place E., St. Paul, MN 55101  
Requested for Testimony and production of documents  
Documents: Any additional documents, letters, notes, etc. regarding subject of Affidavit of December 20, 2010.

**Offer of Proof - Relevancy of Testimony and Documents to be Subpoenaed**

Ms. Bjorklund submitted an Affidavit for the record regarding passage of SF 145, Minn. Stat. §216F.081, and legislative intent. Upon information and belief, Ms. Bjorklund was a wind industry lobbyist at that time. Her statements in the Affidavit must be subject to cross-examination, and all documents, recordings, and notes upon which this Affidavit was based should be produced.

Dated: February 23, 2011




---

Carol A. Overland      Lic. No. 254617  
Attorney for Goodhue Wind Truth  
OVERLAND LAW OFFICE  
P.O. Box 176  
Red Wing, MN 55066  
(612) 227-8638  
[overland@redwing.net](mailto:overland@redwing.net)

<b>OFFICE OF ADMINISTRATIVE HEARINGS</b> P.O. Box 64620, St Paul, MN 55164-0620 Phone: (651) 361-7900 Fax: (651)361-7900		<b>SUBPOENA REQUEST FORM</b> Minn Rule Pt. 1405.1300; 1400.7000 OAH Docket 3-2500-21662-2  Request Date: February 23, 2011
<b>Name of Judge:</b> Kathleen Sheehy	<b>Type of Subpoena</b> Hearing testimony & documents Information re: Statements in Affidavit of 12/20/10	

IN THE MATTER OF THE APPLICATION OF  
GOODHUE WIND, LLC...

OAH Docket 3-2500-21662-2  
MPUC Docket No.: IP-6701/WS-08-1233

Requesting Party or Attorney	Person Being Served
Carol A. Overland, Intervenor Goodhue Wind Truth OVERLAND LAW OFFICE - Legalectric P.O. Box 176 Red Wing, MN 55066 (612) 227-8638 overland@legalectric.org	Michael Bull Senior Resource Planner Xcel Energy 414 Nicollet Avenue South Minneapolis, MN 55101 (800) 328-8226

**Date and Location for Testimony in Evidentiary Hearing:**

Date: March 16 or 17, time certain to be arranged  
Location: Public Utilities Commission, LargeHrg. Rm., 121 – 7<sup>th</sup> Place E., St. Paul, MN 55101  
Requested for Testimony regarding SF 145, Minn. Stat. §216F.081  
Documents: Any additional documents, letters, notes, etc. regarding SF 145, Minn. Stat. §216F.081 and legislative intent.

**Offer of Proof - Relevancy of Testimony and Documents to be Subpoenaed**

Michael Bull was quoted, and/or his statements summarized, in Affidavits of Ingrid Bjorklund and Deborah Pile, Dept. of Commerce, who submitted Affidavits for the record regarding passage of SF 145, including Minn. Stat. §216F.081, and legislative intent. Todd Guerro, Attorney for AWA Goodhue, also quoted and/or summarized Mr. Bull's statements regarding SF 145, statements to the legislative committees, and Minn. Stat. §216F.081. At the time, Michael Bull was an employee of the Dept. of Commerce, also working in the Governor's Office, and was involved in legislative activities. Mr. Bull is requested to provide testimony regarding SF 145, his appearances before Legislative Committees, and any and all other activities regarding SF 145 and its House counterpart, and provide all documents, recordings, and notes upon which his testimony is based.

Dated: February 23, 2011



Carol A. Overland                      Lic. No. 254617  
Attorney for Goodhue Wind Truth  
OVERLAND LAW OFFICE  
P.O. Box 176  
Red Wing, MN 55066  
(612) 227-8638  
overland@redwing.net

# **Exhibit D**

## **ALJ Denial of Subpoena Request**



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

**Mailing Address:**  
P.O. Box 64620  
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900  
TTY: (651) 361-7878  
Fax: (651) 361-7936

March 1, 2011

Carol A. Overland  
Legalelectric, Inc.  
P.O. Box 176  
Red Wing, MN 55066

Re: *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,  
OAH 3-2500-21662-2; PUC IP-6701/WS-08-1233*

Dear Ms. Overland:

I have reviewed the subpoena requests you filed last week seeking to compel the testimony of Ingrid Bjorklund and Michael Bull at the hearing in the above matter. I have two responses. First, I asked the parties to address, in post-hearing memoranda, the issue whether a county has authority to establish more stringent permitting standards only if it has assumed the responsibility to process applications and issue permits for LWECs with a combined nameplate capacity of less than 25 MW. See First Prehearing Order ¶ 13 (Dec. 8, 2010). This is a legal issue, not a factual issue for hearing in this case. The OES decision to file affidavits explaining the development of its position on this issue in advance of the hearing does not create a factual issue requiring testimony by either Ms. Bjorklund or Mr. Bull. Second, the affidavit filed by Ms. Bjorklund is based solely on her review of legislative materials that are available to the general public. You are free to review those materials at any time and to include similar legislative history in your post-hearing memorandum. Your request for the subpoenas, however, is denied.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen D. Sheehy".

KATHLEEN D. SHEEHY  
Administrative Law Judge  
Telephone: (651) 361-7848

KDS:nh

Print Close

#### Service List Member Information

#### Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Julia	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Betcher	Stephen	Steve.Betcher@co.goodhue.mn.us	County of Goodhue	Electronic Service	No
Brusven	Christina	cbrusven@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Cupit	Bob	bob.cupit@state.mn.us	Public Utilities Commission	Electronic Service	No
DeBleekere	Patricia	tricia.debleekere@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
Guerrero	Todd J.	tguerrero@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Haar	Burl W.	burl.haar@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Hammel	Karen Finstad	Karen.Hammel@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Hynes	Patrick	phynes@strobeltanson.com	Strobel & Hanson, P.A.	Electronic Service	No
Lindell	John	agorud.ecf@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Sheehy	Kathleen D.	kathleen.sheehy@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes

#### Paper Service Member(s)

Last Name	First Name	Company Name	Address	Delivery Method	View Trade Secret
Levi	Jack	Goodhue Wind LLC	Suite 525, 3033 Excelsior Blvd., Minneapolis, MN-55416	Paper Service	No
Overland	Carol	Legalelectric, Inc.	P.O. Box 176, Red Wing, MN-55066	Paper Service	No
Schlatter	Laura	Office of Administrative Hearings	P.O. 64620, Saint Paul, MN-55164	Paper Service	Yes
Schleck	Daniel	Mansfield, Tanick and Cohen P.A.	220 South Sixth Street, Suite 1700, Minneapolis, MN-55402	Paper Service	No
Steinberg	Leon	Goodhue Wind, LLC	3033 Excelsior Boulevard, Suite 525, Minneapolis, MN-55416	Paper Service	No

Print Close