

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

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of AWA
Goodhue, LLC for a Site Permit for a 78
MW Wind Project and Associated Facilities
in Goodhue County

Docket No. IP6701/WS-08-1233

**AWA Goodhue's Response to
Petitions for Reconsideration**

I. INTRODUCTION

Pursuant to Minn. R. 7829.3000, AWA Goodhue, LLC ("AWA Goodhue" or the "Permittee") replies to the September 12, 2011 petitions for reconsideration of the Commission's August 23, 2011 Order granting AWA Goodhue a site permit (the "Site Permit Order"). AWA Goodhue is filing a separate response to the petitions for reconsideration of the Commission's Order granting a certificate of need (the "CN Order").

Because the Site Permit Order is both lawful and reasonable and the petitioners do not raise new arguments or identify record evidence to the contrary, the Permittee respectfully requests that the petitions for reconsideration be denied.

II. STANDARD OF REVIEW

According to Minn. Stat. § 216B.27, the Commission may reverse, suspend, or modify its original decision if, after rehearing, it finds its decision unlawful or unreasonable.

In a number of recent siting and routing dockets, the Commission has articulated the following standard regarding requests for reconsideration:

The Commission finds that this petition does not raise new issues, does not point to new and relevant evidence, does not expose errors or ambiguities in

the original Order, and does not otherwise persuade the Commission that it should rethink its original decision.

The Commission concludes that the original decision is the one most consistent with the facts, the law, and the public interest, and will therefore deny the petition for reconsideration.¹

The test here is the same. Is the Commission persuaded that it should rethink its decision? Is its original decision inconsistent with the facts, the law and the public interest?

II. DISCUSSION

Simply, the Commission made a sound decision in its Site Permit Order, and one that is compatible with environmental preservation, sustainable development and the efficient use of resources. After more than two years before this Commission, in which the AWA Goodhue project has undergone, by far, more regulatory scrutiny than any other Minnesota wind farm, it is time to allow the project to proceed. In reality, there is no additional process, no new condition and no new finding that will satisfy the petitioners who ask the Commission to reconsider its decision. As discussed below, because the Site Permit Order is consistent with the facts, the law and the public interest, the Commission must deny the petitions.

A. LEGAL ISSUES

1. **The Commission properly applied the Good Cause standard found in Minn. Stat. § 216F.081.**

Several petitioners challenge the Commission's interpretation of "good cause." Their efforts far fall short, however, and should be rejected. The Commission's interpretation and application of the good cause standard required under Minn. Stat. § 216F.081 is proper.

Relying on settled case law, Administrative Law Judge Sheehy found that the meaning of "good cause" is simply whether there is a "legally sufficient" reason.² She

¹ Order Denying Reconsideration (AWA Goodhue Project), Docket No. IP6701/WS-08-1233 (December 15, 2010), at 2. *See also*, Order Denying Reconsideration (Paynesville Wind Farm), Docket Nos. CN-09-1110 and WS-10-49 (April 1, 2011), at 2; and Order Denying Reconsideration (CapX Brookings-Hampton Line), Docket No. TL-08-1474 (April 14, 2011), at 1.

further found that a conclusion as to whether there is good cause is a mixed question of fact (i.e., what the record shows) and law (i.e., whether the showing is sufficient).³ The Commission correctly concurred with this interpretation and appropriately applied it to this case.

The County, in its challenge, urges the Commission to interpret the statute in a way that is at odds with its plain meaning. It argues that the Commission is *compelled* to adopt the county standards unless the applicant can show that the County's standards are "arbitrary and capricious."⁴ That isn't what the statute says. The statute simply requires that the Commission apply the County's standards unless there are sufficient reasons not to. In finding good cause not to follow the County's standards, both the ALJ and the Commission relied on the detailed findings from a contested case proceeding in which the question was directly posed.

Several petitioners also argue that the Commission erred by using "necessary" as a criteria when describing certain good cause reasons for rejecting County setbacks.⁵ For example, Goodhue Wind Truth takes issue with the Commission's conclusion that "a defacto 'no exposure' standard is not necessary to protect the health, safety and quality of life of Goodhue County residents."⁶ The petitioners conveniently ignore the rest of the Commission's discussion of this issue, including its statements that:

- the Permittee's "noise study showed that the maximum noise level was less than the maximum allowed under the PCA's standards, even with the buffer added to account for low-frequency noise;"⁷

²ALJ's Findings of Fact, Conclusions, and Recommendations, ¶47.

³*Id.* (citing to *Averback v. State*, 791 N.W.2d 449, 561 (Minn. App. 2010)).

⁴Memorandum of Goodhue County in Support of Rehearing and Reconsideration, at 3.

⁵*See, e.g.*, Goodhue Wind Truth's Petition/Motion for Rehearing, Reconsideration and Amendment of Order Issuing Site Permit as Amended, Docket No. IP6701/WS-08-1233 (September 12, 2011), at 4-7.

⁶*Id.*, at 7.

⁷Site Permit Order, at 13.

- the Permittee’s shadow flicker study shows that “96 percent of homes will experience less than 20 hours of shadow flicker per year;”⁸
- “the results of these [noise and shadow flicker] studies demonstrate that there is no reasonable likelihood of adverse health impacts from this Project”;⁹ and
- “A “no exposure” standard could severely hinder the implementation of state renewable energy policies, which depend in part upon carefully sited wind farms to achieve their goal.”¹⁰

Moreover, petitioners ignore the adopted ALJ Findings #56 - #102, which specifically address shortcomings in the County’s 10 RD setback. Despite the protest by the petitioners, the summary language of the Commission’s written explanation rejecting the County’s 10 RD setback as unnecessary to protect health, safety and quality of life does not detract in any way from the good cause analysis it conducted to reach that conclusion.

The ALJ’s and the Commission’s interpretation of “good cause” under Minn. Stat. § 216F.081 is both lawful and reasonable, and reconsideration is improper.

2. The General Permit Standards provide a sufficient basis for determining site permit conditions for the AWA Goodhue project.

In its petition, Goodhue Wind Truth once again challenges whether the Commission has appropriately adopted General Permit Standards. Goodhue Wind Truth raises no new arguments that were not before the Commission when it issued the Site Permit Order and, thus, there is no reason why the Commission should rethink its decision on this point. The Commission directly addressed the issue of whether it had standards of its own on page 7 of the Site Permit Order, stating:

[t]he Commission rejects the claim that it must apply the County’s standards because it lacks standards of its own...by formalizing general wind permit

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*, at 14.

standards for LWECS under 25 MW, the Commission did not alter or limit its authority to apply its existing standards to projects 25 MW or larger.

Goodhue Wind Truth has not offered any reason to revisit this issue.

3. The environmental review of the AWA Goodhue project conforms with Minnesota law.

The Coalition for Sensible Siting (“CSS”) argues that the Commission should reverse its Site Permit Order because “environmental review sufficient to satisfy the requirements of the Minnesota Environmental Policy Act (“MEPA”), Minn. Stat. [Chapter] 116D, must be completed prior to the Commission issuing any approval or permit for the Applicant’s Project.”¹¹ CSS claims that Minn. R. part 7854.0500, subp. 7, provides for “an independent environmental review...but does not exempt the Project from environmental review altogether.”¹² The plain language of the cited rule shows the flaw in this argument. Minn. R. part 7854.0500, subp. 7, states:

The analysis of the environmental impacts required by this subpart satisfies the environmental review requirements of chapter 4410, parts 7849.1000 to 7849.2100, and Minnesota Statutes, chapter 116D. No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.

As the rule plainly states, the Commission’s environmental analysis undertaken as part of the site permit process satisfies all applicable environmental review requirements under Minnesota law and, accordingly, no further environmental review is necessary before the Commission can issue its site permit in this matter.

4. Untimely petitions should not be considered.

Belle Creek Township and Ms. Jeanne Schulte filed petitions for reconsideration after the September 12, 2011 4:30 p.m. filing deadline. As a result, the petitions should be disregarded as untimely. More than in any other case in recent memory, the Commission has

¹¹ Coalition for Sensible Siting Petition, Motion and Request to the Commission to Reconsider Orders Issuing Site permit as Amended for AWA Goodhue Wind, Docket No. IP6701/WS-08-1233 (September 12, 2011), at Section II.

¹² *Id.*

gone out of its way to allow a broad range of public participation. At some point, however, the letter of the law must be enforced. Continuing to allow late filings encourages a lack of respect for the law and the administrative process, and because the Permittee must respond to these untimely barrages, allowing untimely filings to become part of the record is extremely prejudicial to the Permittee. Everyone should be held to the same standards. Belle Creek Township's and other late-filed petitions should be excluded as untimely and not considered.

B. FACTUAL ISSUES

1. The Commission considered all record evidence and included reasonable conditions addressing bald eagles, loggerhead shrike, bats and other wildlife issues.

The petitioners' complaints that Special Condition 13.1 is inadequate to protect eagles, bats, loggerhead shrike and other birds are without merit. The Commission has responded to these concerns by requiring the Permittee to prepare and the Commission to approve an Avian and Bat Protection Plan along with detailed study and reporting requirements. The Commission can reasonably rely on the Department of Natural Resources, U.S. Fish & Wildlife Service, and its own staff to ensure that steps are undertaken to protect these species.

Without any supporting information whatsoever, certain parties have even claimed that the Permittee may have illegally harassed a nesting eagle couple with a helicopter.¹³ The Permittee was not responsible for, and has no knowledge of, any helicopter activity in the area, let alone any helicopter activity in proximity to an eagles' nest. The suggestion that the Permittee was in any way responsible is completely false and falls short of the standard of candor both expected and required of parties before this Commission. If the citizen or County are concerned about what happened with an eagles' nest in Goodhue County, they should have asked the USFWS or Department staff to investigate before making

¹³ See Petitions of Goodhue County at 5 and Mary Hartman at 2.

unsubstantiated claims. Reckless accusations aimed at defaming the Permittee do not constitute a proper basis for reconsideration.

2. The Commission included detailed findings of fact addressing each of the County's more stringent standards and reasonably concluded there was good cause not to apply each of those standards.

After careful review, the Commission adopted detailed findings regarding each of the County's more stringent standards. In each of the critical components of the case, the Commission concluded there was good cause not to apply the County's standards. Where it made sense to do so, the Commission required the Permittee to meet requirements consistent with conditions applied to other wind projects throughout the state. In other circumstances, the Commission applied more stringent conditions, including requiring that the Permittee must make a "good faith effort" to negotiate a waiver from the County's 10 RD setback from non-participating residences and also meet a 6 RD minimum setback.¹⁴ In addition, the Commission strengthened the shadow flicker mitigation condition.¹⁵

Even though the Commission found that there is "no reasonable likelihood of adverse health impacts from this Project,"¹⁶ petitioners continue to argue that the Commission should reverse its decision and impose the full 10 RD setback requirement. If ever there was any doubt in anyone's mind, it should now be completely transparent from the County's petition and others' that the petitioners' efforts are designed not to see that the Project is built in compliance with the County's more stringent standards, but rather that it not be built at all.

The Commission has given full attention to the opponents' arguments, and the petitioners have raised nothing new about the 10 RD setback or any other County standard. The Commission's conclusions regarding its good cause analysis are sound; its permit conditions are a reasonable response to the petitioners' concerns; there is no justification to change any of that now.

¹⁴ Site Permit Condition 4.2.

¹⁵ Site Permit Condition 6.2.

¹⁶ Site Permit Order, at 13.

C. REQUESTS FOR AMENDMENT

A number of petitioners specifically requested that the Commission amend the proposed site permit conditions. The requested amendments include requiring large trees for minimizing shadow flicker, requiring stray voltage testing, providing a property value guarantee, and establishing setbacks from snowmobile trails, among other things. The Commission has examined all of the issues and concerns that have been raised and has imposed reasonable conditions addressing the issues where appropriate. There is no compelling reason to change anything in the Site Permit now based on these petitions.

III. CONCLUSION

Based on the foregoing, the Permittee respectfully requests the Commission deny the petitioners' requests for amendment and/or reconsideration of the Commission's August 23, 2011 Order granting a site permit for the 78 MW AWA Goodhue wind project.

Dated: September 22, 2011

Respectfully submitted,

/s/ Christina K. Brusven

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