

**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  
Certificate of Need for the 78 MW Goodhue  
Wind Project in Goodhue County

PUC: IP-6701/CN-09-1186

**GOODHUE WIND TRUTH'S  
PETITION/MOTION FOR REHEARING, RECONSIDERATION and AMENDMENT  
of  
ORDER ISSUING CERTIFICATE OF NEED**

The Commission erred in issuing an Order Granting Certificate of Need in the above-captioned docket. The errors of law and process are that:

- The AWA Goodhue wind project is in not a Community Based Energy Development (C-BED) project. The project was dramatically changed, and as demonstrated in the record, it is 99% owned by a Texas business organization foreign to Minnesota. 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>1</sup> Minn. Stat. 216B.1612.
- The Environmental Report is not filed in the correct docket, Commission "review" was not sufficient to discover this error -- the Commission cannot make any determination of adequacy of environmental review without the Environmental Report in the right docket.

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<sup>1</sup> Direct Testimony of Mark Ward, p. 4, Tr. 2 (Ward).

At issue in this proceeding is whether the Commission should issue a Certificate of Need for the AWA Goodhue Wind Project. Goodhue Wind Truth requests that the Commission reconsider its Order, and set for rehearing if necessary, because this project is not a C-BED project and C-Bed status is necessary for a valid Certificate of Need. Prior to issuing a Certificate of Need, the Commission must also determine whether the environmental review is adequate.

Goodhue Wind Truth requests that the Commission:

1. Revoke the Certificate of Need; and
2. Make a formal Finding that the AWA Goodhue Wind Project is not a C-BED project and amend the order to reflect this Finding; and
3. Find that the Environmental Report is not adequate as it is not filed in the correct docket, and direct that it be filed correctly prior to any Commission determination of adequacy of environmental review; and
4. Such other relief as is warranted.

### **ERRORS OF LAW**

#### **I. THE AWA GOODHUE WIND PROJECT IS NOT A C-BED PROJECT**

The AWA Goodhue wind project is in not a Community Based Energy Development (C-BED) project. The evidence in the record does not support any Findings that the project is a C-Bed project and instead demonstrates the opposite.

What is now known as the “AWA Goodhue Wind Project” was dramatically changed from that originally proposed and applied for. Missing in the “Procedural History” are significant facts:

On January 22, 2010, the Commission received notice that Goodhue Wind and its financier, American Wind Alliance, LLC, formed a new project Minnesota limited liability company, AWA Goodhue, LLC, to facilitate financing for the Goodhue Wind Project and that all project assets were transferred to that entity. The notice stated that, thereafter, AWA Goodhue, LLC would be the applicant for the project.

Order, Siting Permit, p. 5, para. 24.

As demonstrated in the Siting docket record, in AWA Goodhue’s testimony, AWA Goodhue, LLC is 99% owned by a Texas business organization foreign to Minnesota. 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>2</sup>

Apparently recognizing this problem with C-BED status, the Departments analysis noted first that:

The Department compared the proposed Project with an Xcel-owned alternative and determined that the proposed Project is reasonable under a cost analysis because it is a community-based energy development project (C-BED). The Department confirmed its conclusion in subsequent comments on March 29, 2010.

Order, p. 6, but then noted:

... the Department recommended that the Commission issue a Certificate of Need to AWA Goodhue for the 78 MW wind farm, as long as the Commission determines that the Project is a C-BED project.

Order, p. 7.

This is not a C-BED project as required by Minn. Stat. §216B.1612, and the Order should be amended to reflect that lack of C-BED status.

### **PROCEDURAL ISSUE**

**II. The Environmental Report Scoping Decision and the Environmental Report for the Certificate of Need are filed in the wrong docket, are filed in the Siting docket (08-1233) and not the Certificate of Need docket (09-1186). There is no Environmental Report in the Certificate of Need docket.**

The Commission’s Certificate of Need Order has a section on the “Environmental Report” where it makes statements regarding the Environmental Report. Order, p. 2, § II. The

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

Order also relies on February 12, 2010 Comments from the Department of Commerce, including statements in the future tense about filing of the report which had yet to be written:

Consider the Environmental Report that will be filed by the Department's Energy Facilities Permitting Staff.

Order, p. 6-7, re: Minn. Rules 7849.0120(c)(2),(3), and (4).

The Environmental Report explains the authority for preparation of an Environmental Report and the docket/proceeding within which it is to be prepared and submitted:

*The proposed project is a large energy facility as defined by Minnesota Statutes, section 216B.2421. Such a facility requires a certificate of need from the Commission (Minn. Stat., section 216B.243). Additionally, the Minnesota Department of Commerce must prepare an environmental report (ER) for the project (Minn. Rules 7849.1200).*

*Office of Energy Security, Energy Facility Permitting (OES EFP) staff is responsible for preparing the environmental report (ER). This ER has been prepared as per Minnesota Rules 7849.1100-2100. The ER is part of the record which the Commission will consider in making a decision on a **certificate of need** for the project.*

Environmental Report, Abstract, p. I (*emphasis* added).

The order goes on to state:

Having reviewed the Environmental report, the Commission finds that the Report and the record as a whole adequately address the issues identified in the Department's Scoping Decision.

Order, p. 10. Then the Commission Order point 1 states:

The Commission finds that the Environmental Report on the project adequately addresses the issues identified by the Environmental Report Scoping Decision.

Id, Order Point 1.

What kind of review of the Environmental Report was done?

The Notice of Environmental Report Scoping Decision and Environmental Report Scoping Decision were both filed in the wrong docket, the Siting docket (08-1233), on May 28, 2010<sup>3</sup>. Just over one month later, on June 30, 2010, the Environmental Report was also misfiled in the Siting docket<sup>4</sup>. No environmental review has been filed in the Certificate of Need docket.

The Environmental Report is not in the Certificate of Need docket 09-1186 where it is supposed to be. The Missing-In-Action Environmental Report cannot be deemed adequate!

### III. CONCLUSION

Goodhue Wind Truth requests that the Commission:

1. Revoke the Certificate of Need; and
2. Make a formal Finding that the AWA Goodhue Wind Project is not a C-BED project and amend the order to reflect this Finding; and
3. Find that the Environmental Report is not adequate as it is not filed in the correct docket, and direct that it be filed correctly prior to any Commission determination of adequacy of environmental review; and
4. Such other relief as is warranted.



September 12, 2011

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<sup>3</sup> See [20105-50994-01](#) PUBLIC 08-1233 WS OES NOTICE--ENVIRONMENTAL REPORT SCOPING DECISION 05/28/2010; and [20105-50993-01](#) PUBLIC 08-1233 WS OES OTHER--ENVIRONMENTAL REPORT SCOPING DECISION 05/28/2010

<sup>4</sup> See [20106-52126-02](#) PUBLIC 08-1233 WS OES OTHER--AFFIDAVIT INADVERTENTLY OMITTED FROM 6-29-10 NOTICE 06/30/2010; [20106-52125-02](#) PUBLIC 08-1233 WS OES OTHER--ADDITIONAL LABELS FOR 6-29 NOTICE OF PUBLIC HEARING, AVAILABILITY OF ENVIRONMENTAL REPORT AND AVAILABILITY OF DRAFT SITE PERMIT 06/30/2010; and [20106-52095-02](#) PUBLIC 08-1233 WS OES NOTICE--OF PUBLIC HEARING, AVAILABILITY OF ENVIRONMENTAL REPORT AND AVAILABILITY OF DRAFT SITE PERMIT 06/29/2010