

**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'S  
PETITION/MOTION FOR REHEARING, RECONSIDERATION and AMENDMENT  
of  
ORDER ISSUING SITE PERMIT AS AMENDED FOR AWA GOODHUE WIND  
and  
"EFP FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER..."**

The Commission got it right in acknowledging in its order of August 23, 2011 that under Minn. Stat. §216F.081 the Goodhue County Wind Ordinance should be considered. The Commission appropriately scuttled the Administrative Law Judge's overreach on that point, but then, based on errors in the ALJ's Recommendation, made several glaring fundamental errors of law and many technical errors that render the Order unsupported by the record. In relying on misrepresentations and false statements about "state wind standards" to reach its conclusions regarding setbacks from property lines, the 10 RD setback from neighboring dwellings, setbacks from wetlands and stray voltage testing, the Order is fatally flawed, invalid and requires reconsideration and amendment of the Order to incorporate the Goodhue County Ordinance.

The errors of law are that:

- The Order grossly misrepresents the issue before the Commission as “whether applying the County’s standards to this Project is necessary and whether less stringent standards are sufficient to effectively address the concerns raised.” Order, p. 7. This is NOT the issue. The issue before the Commission is whether there is good cause not to apply the Goodhue County Ordinance. Minn. Stat. §216F.081.
- There are no standards for wind siting of projects greater than 25MW. Cutting the citation and name of the Commission’s Order Establishing “General Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts,” to “Order Establishing General Wind Permit Standards” does not change the purpose and limitations of that Order. See 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.
- Adoption by the Commission of “EFP Findings of Fact, Conclusions of Law and Order, Issuing a Site Permit to AWA Goodhue Wind, LLC for the Goodhue Wind Project” is issuance of TWO orders in the siting docket, an error of law. The “EFP Findings of Fact, Conclusions of Law and Order, Issuing a Site Permit to AWA Goodhue Wind, LLC for the Goodhue Wind Project” must be deleted from the Commission’s Order. If the Commission wishes to incorporate specific points in the “EFP” Order, it should incorporate them into the Commission Order.
- The AWA Goodhue wind project is 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.

In addition to these three fundamental errors of law, the Commission’s Order is riddled with other errors:

- Wind on the Wires’ comments are given undue status and weight. WOW is a program of the Izaak Walton League, was not an intervening party, yet commented after the close of the record, just seconds before the decision. The reference in the Order to Wind on the Wires’ position demonstrates improper bias in favor of Izaak Walton League’s position, and undue influence of the Walton’s long-time Executive Director Bill Grant, whose

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

current position is Deputy Commissioner of Commerce heading Energy Facilities Permitting.

- The “Procedural History” is missing many significant points along the road to the August 23, 2011 Order. By omission, the Order implies that the yearlong development of the October 5, 2010 Goodhue County Ordinance was a sudden surprise.
- Most of the EFP’s “Findings of Fact” have no citations to the record and many are unsupported by the record!

At issue in this proceeding is whether the Commission should reconsider its decision whether to apply the Goodhue County Ordinance, and upon reconsideration, whether rehearing and amendment is warranted.. Goodhue County had authority to enact its Wind Ordinance, explicitly under Minn. Stat. §216F.081, and the issue before the Commission was whether the County’s presumptively valid Ordinance should be applied, which it should, and whether the ordinance has been proven by the Applicant AWA Goodhue to be arbitrary and capricious, which it has not. The Commission has made four significant errors of law. Goodhue Wind Truth requests that the Commission reconsider its Order, and set for rehearing if necessary, because there is no good cause for the Commission not to apply the County’s ordinance, specifically:

1. Make a formal Finding that there is not good cause not to apply the Goodhue County Wind Ordinance, and amend the Order and Site Permit to include the standards in the Goodhue County Wind Ordinance; and
2. Make a formal Finding of Fact that the Commission has not adopted siting standards for wind projects greater than 25MW and delete every reference in the Order to the Order in docket 07-1022 implying or stating applicability to this and other projects over 25MW; and
3. Reject the EFP Staff “Findings of Fact, Conclusions of Law and Order” and incorporate specific findings into the Commission’s Order; and
4. Make a formal Finding that the AWA Goodhue Wind Project is not a C-BED project; and
5. Delete references to Wind on the Wires in the Order and all Conclusions dependent on that reference; and

6. Amend Findings to include the many procedural steps taken by Goodhue County in enacting its Wind Ordinance; and
7. Delete Findings and Amendments to Order not discussed during Commission deliberations; and
8. 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
9. Order such other relief as is warranted.

### **ERRORS OF LAW**

#### **I. THERE IS NOT GOOD CAUSE NOT TO APPLY THE GOODHUE COUNTY WIND ORDINANCE.**

The first error of law is that the Commission’s Order grossly misrepresents the issue before the Commission as “whether applying the County’s standards to this Project is **necessary** and whether **less stringent standards are sufficient to effectively address the concerns raised.**” Order, p. 7 (emphasis added). This is NOT the issue. The issue before the Commission, as clearly stated in the statute, and also by Commissioners in deliberation, is whether there is good cause not to apply the Goodhue County Ordinance. Minn. Stat. §216F.081. In each instance of using this misstatement of the issue presented, it is used in the logical sequence to reach a conclusion that there is good cause not to enforce the Goodhue County Ordinance, and as such, each conclusion reached is flawed.

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.

As pointed out by Belle Creek Township 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). 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).

In the Commission's deliberation, and in its initial referral to Office of Administrative Hearings, the Commission presumed that the Goodhue County Ordinance did apply, and, focusing on whether there is "good cause" not to apply the County Ordinance, requested development of the record regarding three narrow issues:

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.

Despite this clear directive, the ALJ strayed from the issues referred by the Commission, and strayed from the issue as found in Minn. Stat. 216F.081.

The Applicants raised the “necessary” mantra:

*The Applicant argued that applying the County’s standard is not necessary to protect the wind access rights of non-participating property owners and that the Commission’s wind access buffer setback is effective in protecting those rights.*

ALJ made this error of law, adopting in her Recommendation the Applicant’s misconception of county purpose and conflation of “necessary” with “good cause,” as reflected in the Commission’s Order:

*The ALJ found that use of the County’s proxy is not necessary to protect the wind access rights of non-participating property owners and significantly reduces the availability of land for this Project. As a result, she concluded that there is good cause not to apply the County’s property line setback standard to this Project.*

Order, p. 8. This is also effectively a shift of the burden of proof away from the Applicants, and onto the county.

The Commission’s Order the adopted this misconception, burden shift, and error of law when it concludes regarding the County property like setback:

*The Commission concurs with the ALJ that use of the County’s property line setback **is not necessary to protect the rights of non-participating landowners** and finds good cause not to apply this standard. Using actual wind data more effectively protects the wind access rights of non-participating property owners and minimizes the effects of wind turbine-induced turbulence downwind. The Commission will therefore require the Applicant to apply its proposed wind access buffer setback, consistent with the Commission’s general permit standards.*

Order, p. 8.

The Applicant continued use of “necessary” in its argument regarding the 10 RD setback:

*The Applicant argued that the record demonstrates that the County's standard is unnecessary to avert adverse effects of noise and shadow flicker and that there are no sufficiently rigorous scientific studies credibly demonstrating that wind turbines cause adverse health effects, either from noise or shadow flicker .*

Order, p. 9. And the Commission again made this error of law in its decision regarding the 10 RD setback:

A de facto "no exposure" standard is not necessary to protect the health, safety, and quality of life of Goodhue County residents.

Order, p. 14.

Use of "necessary" as a criteria is the improper measure, and improper use of "necessary" does not equate "good cause," the standard required by Minn. Stat. §216F.081. This is an error of law. Where this is relied on in the Order as rationale for finding "good cause," the property line setback and the 10 RD setback,, the Order is invalid.

## **II. THE STATE HAS NOT ADOPTED SITING STANDARDS FOR WIND PROJECTS GREATER THAN 25 MW.**

The Commission's Order is also flawed because it relies in large part on its repeated legal error in stating that the Commission has established standards for siting of Large Wind Energy Conversion Systems<sup>2</sup>. The Commission has not established standards, admitted by Commissioner O'Brien during the deliberations when he stated that he knew there were no standards, but that the Commission needed flexibility. There is no basis for Commission and Commerce claims that there are standards for wind siting of projects greater than 25MW. Cutting the citation and name of the Commission's Order Establishing "General Permit Standards for the Siting of Wind Generation

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<sup>2</sup> The Commission's Order repeatedly mis-cites the Commission's January 11, 2008 Order in Docket E,G-999/M-07-1102, Ex. 21 in this docket, as "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" as "Order Establishing General Wind Permit Standards." See Order, p. 4, fn. 5; p. 6; p. 6 fn. 11; p. 7, fn. 14; p. 9, fn. 17; p. 15, fn. 33; p. 16, fn. 36.

Projects Less than 25 Megawatts,” to “Order Establishing General Wind Permit Standards” does not change the enabling statute, the purpose or the express megawatt limitations of that Order and its Appendix A. See 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. In each instance of using this misrepresentation of siting standards, it is used in logical sequence to reach a conclusion that there is good cause not to enforce the Goodhue County Ordinance, and as such, each conclusion reached is invalid.

The 25 megawatt limitation is specifically stated in the Order, and by its reference to the statute:

*After careful consideration, the Commission herein adopts the attached "General Wind Turbine Permit Setbacks and Standards for LWECS Facilities Permitted by Counties Pursuant to Minnesota Statute 216F.08." Exhibit A.*

Order p. 3, 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.

This 25MW limitation is further stated and confirmed in the “Order” section of the Order:

1. The Commission herein adopts the Large Wind Energy Conversion System General Wind Turbine Permit Setbacks and Standards proposed by the Department of Commerce Energy Facility Permitting staff, attached as Exhibit A. The general permit standards shall apply to large wind energy conversion system site permits issued by counties pursuant to Minn. Stat. 216F.08 and to permits issued by the Commission for LWECS with a combined nameplate capacity of less than 25,000 watts.

Id., p. 7. Exhibit A referred to is as specific, citing Minn. Stat. §216F.08 in the heading:

**Exhibit A**  
**Minnesota Public Utilities Commission**  
**General Wind Turbine Permit Setbacks and Standards for Large Wind Energy Conversion System (LWECS) Permitted Pursuant to Minnesota Statute 216F.08**

Id., Exhibit A.



Again, the Commission issued this order pursuant to the Commission’s authority under Minn. Stat. § 216F.08, and by its express language, Minn. Stat. §216F.08 is limited to projects 25MW or less:

**216F.08 PERMIT AUTHORITY; ASSUMPTION BY COUNTIES.**

(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. Processing by a county shall be done in accordance with procedures and processes established under chapter 394.

(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](#).

(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.

(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.

Minn. Stat. §216F.08 (**emphasis added**).

How much clearer can it be?

Despite this clear and express limitation of the “Order Establishing General Wind Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts” the Commission Order repeatedly, improperly and inexplicably cites to and relies on this prior Order, referring to “the Commission’s general wind permit standards.” For example, in its Order the Commission used the false statement regarding state standards as basis for each of its decisions regarding

setbacks from property lines, the 10 RD setback from neighboring dwellings, setbacks from wetlands and stray voltage testing:

- **The Commission’s general wind permit standards** contain a wind access buffer setback from all boundaries of a developer’s site control area of 3 RD on the secondary wind axis and 5 RD on the predominant axis.<sup>3</sup>
- The ALJ evaluated the County’s property line setback, which uses a broadly defined proxy of two 100 degree arcs for determining the prevailing wind. She found this standard to be less precise than using actual wind data, which the Applicant relied on to incorporate a wind access buffer setback consistent with **the Commission’s general wind permit standards**.<sup>4</sup>
- **The Commission’s general wind permit standards** require a setback of at least 500 feet from all homes, and any additional distance necessary to meet the PCA noise standards.<sup>5</sup>
- **The Commission’s general wind permit standards** prohibit wind turbines from being placed in wetlands but do not contain a setback for turbines from wetlands.<sup>6</sup>
- **The Commission’s general wind permit standards** do not require stray voltage testing.<sup>7</sup>
- The Commission will modify Finding 60 of the ALJ’s Report to read as follows:

The Commission’s ~~general wind permit standards~~ **General Wind Permit Standards Order** requiring that turbines must be set back at least 500 feet from all homes, plus whatever additional distance is necessary to meet state noise standards.<sup>8</sup>

- Finding 60 of the ALJ’s Report is modified to read as follows:

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<sup>3</sup> Order, p. 7, fn. 14.

<sup>4</sup> Order, p. 8, citing ALJ Recommendation FoF 54, which states “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.” There is no citation with this FoF to any Commission definition!

<sup>5</sup> Order, p. 9, fn. 17.

<sup>6</sup> Order, p. 15, fn. 33.

<sup>7</sup> Order p. 16, fn. 36.

<sup>8</sup> Order p. 20, citing FOF 60, which cites Goodhue Co. Exhibit 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.

The Commission's ~~general wind permit standards~~ **General Wind Permit Standards Order** requiring that turbines must be set back at least 500 feet from all homes, plus whatever additional distance is necessary to meet state noise standards.<sup>9</sup>

Order, July 23, 2011.

The above statements in the Commission's Order of August 23, 2011 regarding a "General Wind Permit Standards Order" are false because there is no "General Wind Permit Standards Order", and the conclusions drawn in reliance on these false statements and in reliance on the fiction that the Commission has "general wind permit standards" are an error of law. Further, changes to the ALJ's Finding of Fact 60, as above, were not addressed during Commission deliberation and should not be incorporated into the Order as the decision of the Commission.

The Commission's overt and repeated misrepresentation of the January 11, 2008 Order and its authority under Minn. Stat. §216F.08 and reliance on these misrepresentations for its Order of August 23, 2011 is a blatant error of law. In each instance where this false statement regarding "general wind permit standards" is relied on in the Order as rationale for finding "good cause," the Order is invalid. The Commission's Order regarding setbacks from property lines, the 10 RD setback from neighboring dwellings, setbacks from wetlands and stray voltage testing is flawed and invalid and requires reconsideration and amendment of the Order to incorporate the Goodhue County Ordinance.

### **III. THE COMMISSION'S ADOPTION OF EFP STAFF'S "FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER" IS AN ERROR OF LAW**

There is a parallel second "Order" in this proceeding, the EFP Staff's "Findings of Fact, Conclusions of Law and Order, Issuing a Site Permit to AWA Goodhue Wind, LLC for the Goodhue Wind Project" that is not authorized by any rules and is not legitimate. Adoption by

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<sup>9</sup> Order p. 20, citing FOF 60, which cites Goodhue Co. Exhibit 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.

the Commission of “EFP Findings of Fact, Conclusions of Law and Order, Issuing a Site Permit to AWA Goodhue Wind, LLC for the Goodhue Wind Project” is an error of law.

The issue presented to the Commission in PUC Staff Briefing Papers in the Siting docket (08-1233) was “Should the Commission adopt the Findings of Fact provided by the Administrative Law Judge? Should the Commission grant a site permit to AWA Goodhue Wind, LLC for the 78 MW Goodhue Wind Project?” There is no reference to or parallel question “Should the Commission adopt the Findings of Fact provided by EFP Staff.?” There was no indication or notice that this was in the realm of possibilities. However, the Commission apparently adopted this “Order” with only a few nominal amendments made when they specifically referred to “EFP Findings of Fact” during deliberations.

The “EFP Findings of Fact, Conclusions of Law and Order,” as adopted by the Commission, is fraught with errors and omissions:

- This project docket had a contested case, with an ALJ Recommendation. Parties intervened in the docket, not only for purposes of participation in the contested case. Parties were afforded opportunity under the rules to submit exceptions to the ALJ’s Recommendation but had no such opportunity to critique and comment on the EFP’s proposed “Findings of Fact, Conclusions of Law and Order.”
- In a siting docket, EFP Staff typically submits Staff Briefing Papers, similar to the PUC’s Staff Briefing Papers. On June 20, 2011, in this siting docket (08-1233) EFP staff filed what was labeled as “BRIEFING PAPERS--COMMENTS AND RECOMMENDATION AND PROPOSED FOF AND SITE PERMIT”<sup>10</sup>
- The June 20, 2011 filing contained EFP Staff “Findings of Fact, Conclusions of Law and Order, Issuing a Site Permit to AWA Goodhue Wind, LLC for the Goodhue Wind Project”<sup>11</sup> which were submitted June 20, 2011 (dated June 30, 2011), over a month after Exceptions to the ALJ’s Recommendation were due (May 16, 2011).

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<sup>10</sup> See [20116-63815-01](#) PUBLIC 08-1233 WS EFP BRIEFING PAPERS--COMMENTS AND RECOMMENDATION AND PROPOSED FOF AND SITE PERMIT 06/20/2011

<sup>11</sup> See again [20116-63815-01](#) PUBLIC 08-1233 WS EFP BRIEFING PAPERS--COMMENTS AND RECOMMENDATION AND PROPOSED FOF AND SITE PERMIT 06/20/2011

- Nothing in the rules provides for submission of EFP Staff “Findings of Fact, Conclusions of Law and Order, Issuing a Site Permit.”
- Parties had no opportunity under the rules to submit Exceptions or Comments on the “EFP Findings of Fact, Conclusions of Law and Order” prior to review by the Commission.
- EFP Staff “FoF” contain a limited and misstated “Statement of Issue” on the first page that does not address Commission’s three issue referral charge to OAH.
- EFP Staff “Findings of Fact” are materially flawed due to many statements not supported by citations to the record. Those FOF that do cite to the record include FoF 1-5; 7-10, 13, 15, 19-20, 28, 37, 39, 44-45, 50, 59, 71, 74, 79, 82-83, 87 (partial), 89, 93(partial), 111-112, 114-115, 118-123, 131-132, 139, 148, 151, 164-165. Most of the “Findings of Fact” have no citations to the record whatsoever. Those with no citations to the record include Exhibits 6, 11-12, 14, 16-18, 21-27, 29-38, 40-43, 46-49, 51-58, 60-70, 72-73, 75-78, 80-81, 84-86, 88, 90-92, 94-110, 113, 116-117, 124-130, 133-138, 140-147, 149-150, 152-163, and 167-169.
- The “EFP Findings of Fact” cite to documents not within the record, and this documentation must be provided to all parties and the public and at the very least, a process for Comments should be established. The documents not in the record include but are not limited to:

*The Impact of Wind Power Projects on Residential Property Values in the United States*, Lawrence Berkeley National Laboratory (Dec. 2009).

*A Study of Wind Energy Conversion Systems in Minnesota*, Stearns County Assessors Office (Jun 1, 2010.)

Documentation of meetings, reports, correspondence regarding eagles.

National Eagle Center and Minnesota Audubon Society eagle documentation.

June 2, 2011 Letter from USFWS regarding eagles.

June 2011 letter from DNR regarding Loggerhead Shrike.

The Commission’s adoption of the “EFP Order” should be revoked, and to the extent necessary after allowing responses by intervening parties, Finding by Finding, Conclusion by Conclusion, the Commission should integrate its selected parts of the “EFP Order” into the Commission’s Order.

#### **IV. 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. 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>12</sup>

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

#### **PROCEDURAL ISSUES**

#### **V. INCLUSION OF “WIND ON THE WIRES” COMMENTS EVIDENCES UNDUE INFLUENCE OF COMMERCE AND VIOLATES MINN. STAT. §14.61 CLOSURE OF RECORD.**

Wind on the Wires made comments at the Commission meeting June 30, 2011, but Wind on the Wires was not a party in this proceeding and the evidentiary record had closed long before that date. Minn. Stat. §14.61. Parties had no opportunity to cross-examine or rebut the statements made at that meeting.

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<sup>12</sup> Direct Testimony of Mark Ward, p. 4, Tr. 2 (Ward).

Wind on the Wires is a primary program of the Izaak Walton League, which Bill Grant, the current Dept. of Commerce's Deputy Commissioner, headed until his recent appointment overseeing Energy Facility Permitting, including this AWA Goodhue Wind site permit.

"Wind on the Wires' lobbying efforts are improperly inserted in the Commission Order beginning on page 10:

At the Commission meeting, Wind on the Wires (WOW) commented on the 10 RD standard, stating that there is good cause not to apply the standard. The organization expressed concern that applying the standard would send a broad signal to the wind industry discouraging wind development.

WOW encouraged the Commission to look at the statewide impact of applying such stringent standards on achieving the state's renewable energy requirements and argued that testing the renewable energy requirements against any one particular project would hamstring wind development. Furthermore, WOW also argued that applying new and unexpected standards to this project at this late point in the process would create uncertainty for future wind development.

August 23, 2011 Order, p. 10-11. Given the Deputy Commissioner's prior history, this weight given to Wind on the Wires is an example of improper and undue influence.

At the outset, the Commission's Order claims that "Wind on the Wires is a collaborative organization whose aim is to overcome barriers to bringing wind energy to market."<sup>13</sup> Wind on the Wires is a program of the Izaak Walton League, as identified in its annual IRS 990 filings. For example, in the 2009 990<sup>14</sup>, the most current one on the IWLA site, "Wind on the Wires" is listed as the first program, and at \$610,281.00 has the highest expenses. WOW is separate from the Walton's other energy work, with reported expenses in 2009 of \$440,616.00.

The description of the Wind on the Wires program:

*Wind on the Wires: During 2009, Wind on the Wires crafted and advocated for policies to advance the deployment of wind power in the Midwest to meet state, regional and national renewable energy standards objectives and goals and decrease the out put from carbon-intensive power plants. WOW participated in transmission planning studies, regulatory*

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<sup>13</sup> Order, p. 10, fn. 21.

<sup>14</sup> See IWLA 2009 990: <http://www.iwla.org/index.php?ht=a/GetDocumentAction/i/6796>

*proceedings, and development of market rules to integrate wind power into the electric transmission system, discussions on cost allocation for new transmission lines, and additional stakeholder proceedings. WOW educated colleague organizations, key decision-makers, the general public and other stakeholders on the technical aspects of infrastructure to deliver wind power to market.*

Id., p.2.

Wind on the Wires has been around for a decade now. Wind on the Wires does now exist as a separate business organization under the laws of the state of Minnesota<sup>15</sup>, and has a “separate” suite number at the same 1619 Dayton address as the Waltons, but it remains a program of the Midwest Izaak Walton League of America. Employees of “Wind on the Wires” such as Josh Gackle, who spoke at the meeting, and Beth Soholt, are employees of the Izaak Walton League<sup>16</sup>. Until earlier this year, the Izaak Walton League’s list of lobbyists<sup>17</sup> included Bill Grant, who terminated in February, and Soholt and Gackle, who are now registered as “Wind on the Wires” lobbyists<sup>18</sup>.

The Order notes that a Wind on the Wires lobbyist stated there was good cause not to apply the standard, but there is no explanation of what that “good cause” is. The Order claims the Commission should look at the statewide impact on achieving RES, but this is one docket regarding one county’s ordinance and the state law requiring that a county’s ordinance be applied. Minn. Stat. §216F.081. When questioned by Commissioner Wergin, Gackle agreed that it’s likely the utilities could meet RES requirements. Xcel Energy, holder of the PPAs for this project, demonstrates Commissioner Wergin’s point – Xcel has met its RES requirement years early, and states in its Integrated Resource Plan application that “we do not need to add wind power to

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<sup>15</sup> See Secretary of State online info: [http://mblsportal.sos.state.mn.us/Business/SearchDetails/2A-525?status=Active&itemType=Nonprofit Corporation \(Domestic\)](http://mblsportal.sos.state.mn.us/Business/SearchDetails/2A-525?status=Active&itemType=Nonprofit Corporation (Domestic))

<sup>16</sup> See Walton’s 2007 IRS 990, p. 12, showing Beth Soholt, Dir. WoW as employee, \$89,200 salary and \$11,649 for employee benefit plan & deferred compensation: <http://www.guidestar.org/FinDocuments//2007/361/930/2007-361930035-0457fc4c-9.pdf> Since 2007 990, the employee salary reporting threshold rules were raised to \$100,000.00 and Soholt is not listed.

<sup>17</sup> See Campaign Finance Board registration information: <http://www.cfboard.state.mn.us/lobby/adetail/a4423.html>

<sup>18</sup> Wind on Wires lobbyist list: <http://www.cfboard.state.mn.us/lobby/adetail/a5945.html>



comply with RES/REO milestones in the next five years.<sup>19</sup> When asked by Commissioner Wergin whether he believes that there are some places where there shouldn't be a project, Gackle also agreed.

The Order also indulges in a fictional theme of this docket and the Order, stating that “WOW also argued that applying new and unexpected standards to this Project at this late point in the process would create uncertainty for future wind development.” As noted below in detail, the Order omits the long and difficult and time consuming process that Goodhue County went through over more than a year to develop its wind ordinance. Statements like that in the Order are deceptive, and disrespectful of the careful, thoughtful, and extremely robust and public process that is the essence of democracy!

Who and what is WOW to be making these statements to the Commission? In 2001, Wind on the Wires began with a McKnight Foundation grant via the Energy Foundation, which awarded \$4.5 million for “Wind on the Wires..<sup>20</sup>” McKnight and the Energy Foundation awarded Wind on the Wires another \$8.1 million<sup>21</sup> in 2003, announced days after the filing of a Settlement Agreement in the TRANSLink docket (02-2152)<sup>22</sup> between Northern States Power and the Izaak Walton League of America, ME3/Fresh Energy, Minnesota Center for Environmental Advocacy and North American Water Office. In the Settlement Agreement, the organizations pledged to promote transmission in the Midwest, including support of state and federal regulatory changes,

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<sup>19</sup> See Xcel Energy IRP, p. 1-6 (PUC Docket 10-825); see also 5-3: “Together with the REC bank we have accumulated due to our early actions to add renewable generation to our portfolio, we are well ahead of all of our renewable energy targets.”

<sup>20</sup> Upper Midwest transmission project launched, May 4, 2001: <http://www.elp.com/index/display/article-display/100486/articles/electric-light-power/projects-contracts/2001/05/upper-midwest-transmission-project-launched.html>

<sup>21</sup> McKnight press release online at: <http://legalelectric.org/f/2009/08/8millionwow.pdf>

<sup>22</sup> Settlement Agreement <http://legalelectric.org/f/2010/03/settlement-agreement-02-2152-me3-waltons-mcea-nawo.pdf> ; see also announcement of \$8.1 million Wind on the Wires grant two days later from McKnight Foundation via Energy Foundation: [http://nocapx2020.info/wp-content/uploads/2007/12/news\\_detailaspx-wow-81.htm](http://nocapx2020.info/wp-content/uploads/2007/12/news_detailaspx-wow-81.htm)

such as the 2005 Omnibus Energy Bill<sup>23</sup> lobbied for by Bill Grant, Beth Soholt and others that had signed the agreement that paved the way for CapX 2020 transmission.

As Commission and Commerce staff knows or should know, Bill Grant was intimately involved in the TRANSLink Settlement Agreement<sup>24</sup>, two Prairie Island agreements, a Merger Agreement or two, and others during his long tenure as the Associate Executive Director of the Izaak Walton League of America, and as a lobbyist<sup>25</sup> for same. Grant held this position immediately prior to his appointment earlier this year to become Deputy Commissioner of Commerce in charge of Energy Facilities Permitting. Each of these agreements Grant was involved in required incremental compromise of the Walton's positions, and entailed both restraint from and affirmative actions to fulfill the requirements of those agreements. For example, during his term as Associate Executive Director, the Midwest Izaak Walton League and its Wind on the Wires program was a contributor to NWCC's "Permitting of Wind Energy Facilities<sup>26</sup>," IWLA's WOW joined AWEA in offering Minnesota to the DOE as a transmission corridor<sup>27</sup>, intervened with other signators to the TRANSLink agreement supporting CapX 2020 transmission's Certificate of Need<sup>28</sup> with conditions for a nominal percentage of transmission capacity "for wind," and made a grossly offensive promotional presentation on coal gasification,<sup>29</sup> at "Electricity 2020," an IDEC coal gasification promotional event in Grand Rapids, Minnesota,

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<sup>23</sup> 2005 Senate File 1368, Ch 97 <https://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S1368.3&session=1s84>

<sup>24</sup> Settlement Agreement <http://legalelectric.org/f/2010/03/settlement-agreement-02-2152-me3-waltons-mcea-nawo.pdf>

<sup>25</sup> See Campaign Finance Board site: <http://www.cfboard.state.mn.us/lobby/lbdetail/lb3480.html>

<sup>26</sup> National Wind Coordinating Committee's Permitting of Wind Energy Facilities is available online at: [www.nationalwind.org/assets/publications/permitting2002.pdf](http://www.nationalwind.org/assets/publications/permitting2002.pdf)

<sup>27</sup> AWA and WOW NIETC Comment and Corridor Proposal, online at [http://nocapx2020.info/wp-content/uploads/2008/08/awea\\_transmission\\_corridors\\_12\\_1\\_2006.pdf](http://nocapx2020.info/wp-content/uploads/2008/08/awea_transmission_corridors_12_1_2006.pdf)

<sup>28</sup> See **4897898** PUBLIC 06-1115 CN WIND ON THE WIRES, IWLA, FRESH ENERGY AND MCEA INTERVENTION-- 01/16/2008

<sup>29</sup> Energy Efficiency and Climate Friendly Power Supply (particularly slides 14-21), February 14, 2007, Sawmill Inn, Grand Rapids, MN. Online at <http://legalelectric.org/f/2007/07/iedc-energy-efficiency-and-climate-friendly-power-supply.ppt>. Izaak Walton League received grants from Joyce Foundation to promote coal gasification. All presentations from IDEC's Sawmill Inn IGCC promotional event are here: <http://legalelectric.org/weblog/1337/>

near Excelsior Energy's site for the Mesaba IGCC Project. These agreements, actions, promotions and positions of Bill Grant, the Izaak Walton League and Wind on the Wires should be regarded as statements in their interest, but not necessarily in the public interest, and often contrary to the public interest.

The Commission should not give last minute statements of non-party Wind on the Wires favored and improperly partial treatment, nor should it assign WOW more credibility than is afforded the many, many people whose hard work was not included in the Commission's Order, those who testified in so many state, county and federal venues over the years, who made hundreds of copies of documents and provided them to Judge Lipman, Judge Sheehy, the Commission and Office of Energy Security staff, and to the Planning Advisory Commission and County Board of Goodhue County.

## **VI. PROCEDURAL STEPS ARE INCORRECT OR MISSING**

There are details missing in the Order that present a skewed picture of the facts. One would think that Goodhue County's Ordinance suddenly appeared out of the blue on October 5, 2010, though it was in process for over a year. Details discussed in deliberation are not reflected in the order, and changes made in the order were not discussed during deliberation. This type of error detracts from the credibility of the Order and the Commission and should be corrected.

### **A. Commission Order misrepresents and omits Goodhue County and other process steps.**

The Order Issuing Site Permit as Amended of August 23, 2011 misrepresents the timeline of the Goodhue County ordinance process and leaves out many other important process steps. For example:, the "Order" labeled 6-20-2011 and dated August 23, 2011, lists chronological milestones and steps on pages 2-5 that are missing from the Commissions Order. In both

“Orders” the Goodhue County Ordinance drops out of nowhere on October 5, 2010, when instead the record reflects a long process over more than a year.<sup>30</sup>

These missing procedural steps include:

- January 8, 2007 – Goodhue Planning Advisory Commission (PAC) – Wozniak presentation of Wind Energy Ordinance
- February 12, 2007 – Goodhue PAC – Wozniak presentation of latest draft of Wind Energy Ordinance
- March 19, 2007 – Goodhue PAC – Wind Energy Ordinance
- April 16, 2007 – Goodhue PAC – Wind Energy Ordinance
- June 18, 2007 – Goodhue PAC – Zoning Ordinance Amendment Request
- October 14, 2008 – Request to Goodhue County Board for C-BED approval for Goodhue Wind Project
- November 4, 2008 – Goodhue County Board tables C-BED request to December 4, 2008
- November 26, 2008 – Goodhue County Board receives letter from Land Use Management requesting support for Goodhue Wind Energy Project as C-BED
- December 4, 2008 – Goodhue County Board approves Conditional Use Permit and C-BED Resolution for Goodhue Wind.
- January, 2010 – Goodhue County receives Application for Zoning Ordinance Amendment
- March 2010 – Goodhue PAC – consideration of Zoning Ordinance Amendment, and recommendation of formation of PAC Sub-Committee.
- May 4, 2010 – Goodhue County Board review of Zoning Ordinance Amendment for Article 18 (WECS),
- June 15, 2010 – Goodhue County Board receives Land Use Management Director’s Report – PAC Sub-Committee Update. Goal to have proposed changes considered at September Board meeting.

**B. Changes to findings discussed in the deliberation are not reflected in the order, and changes in the order are not in the deliberation.**

Several alterations appearing in the Order regarding the ALJ Recommendation and the “EFP Findings” were not discussed by the Commission. The Order should be amended by deleting these references to changes not included in the Commission’s deliberation, specifically:

- The Commission will modify Finding 60 of the ALJ’s Report to read as follows:

The Commission’s ~~general wind permit standards~~ **General Wind Permit Standards Order** requiring that turbines must be set back at least 500 feet

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<sup>30</sup> Ex. 24, Goodhue County Ordinance Record.

from all homes, plus whatever additional distance is necessary to meet state noise standards.<sup>31</sup>

- Finding 60 of the ALJ's Report is modified to read as follows:  
The Commission's ~~general wind permit standards~~ **General Wind Permit Standards Order** requiring that turbines must be set back at least 500 feet from all homes, plus whatever additional distance is necessary to meet state noise standards.<sup>32</sup>
- There was no discussion or Motion regarding a change to EFP Finding 158.

Any and all alterations, deletions, additions, amendments to either the ALJ Recommendation or the EFP "Findings" that was not part of the deliberation, motion and vote of the Commission should be eliminated.

**C. The Environmental Report Scoping Decision and the Environmental Report for the Certificate of Need are filed in the wrong docket -- they are filed in the Siting docket (08-1233) and not the Certificate of Need docket (09-1186).**

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).

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<sup>31</sup> Order p. 20, citing FOF 60, which cites Goodhue Co. Exhibit 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>32</sup> Order p. 20, citing FOF 60, which cites Goodhue Co. Exhibit 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.

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>33</sup>. Just over one month later, on June 30, 2010, the Environmental Report was also misfiled in the Siting docket<sup>34</sup>.

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!

## VII. CONCLUSION

In relying on misrepresentations and false statements to reach its conclusions regarding setbacks from property lines, the 10 RD setback from neighboring dwellings, setbacks from wetlands and stray voltage testing, the Commission's Order is fatally flawed, invalid and requires reconsideration and amendment of the Order to incorporate and apply the Goodhue County Ordinance.

Specifically, Goodhue Wind Truth requests that the Commission:

1. Make a formal Finding that there is not good cause not to apply the Goodhue County Wind Ordinance, and amend the Order and Site Permit to include the standards in the Goodhue County Wind Ordinance; and
2. Make a formal Finding of Fact that the Commission has not adopted siting standards for wind projects greater than 25MW and delete every reference in the Order to the Order in docket 07-1022 implying or stating applicability to this and other projects over 25MW; and
3. Reject the EFP Staff "Findings of Fact, Conclusions of Law and Order" and incorporate specific findings into the Commission's Order; and

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<sup>33</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>34</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

4. Make a formal Finding that the AWA Goodhue Wind Project is not a C-BED project; and
5. Delete references to Wind on the Wires in the Order and all Conclusions dependent on that reference; and
6. Amend Findings to include the many procedural steps taken by Goodhue County in enacting its Wind Ordinance; and
7. Delete Findings and Amendments to Order not discussed during Commission deliberations; and
8. 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
9. Grant such other relief as is warranted.

September 12, 2011



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