

STATE OF MINNESOTA
IN COURT OF APPEALS



In the Matter of the Application of
AWA Goodhue Wind, LLC, for a
Site Permit for a 78 Megawatt Large
Wind Energy Conversion System
Project in Goodhue County.

O R D E R
A11-1681
A11-1689
A11-1691
A11-1692

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Belle Creek Township, Goodhue Wind Truth, Goodhue County, and the Coalition for Sensible Siting filed separate certiorari appeals (A11-1681, A11-1689, A11-1691, and A11-1692, respectively) from a decision issued by the Minnesota Public Utilities Commission (MPUC) on August 23, 2011. Relators challenge the MPUC's decision to grant an application submitted by AWA Goodhue, LLC, for a site permit to construct, operate, maintain, and manage a Large Wind Energy Conversion System (LWECS) in Goodhue County.

2. Because relators challenge the same MPUC decision and the appeals will involve the same record, consolidation of the appeals will enhance judicial economy.

3. In their statements of the case, relators indicate that the appeals should be stayed because motions for reconsideration were filed and are still pending before the MPUC.

4. Relators filed a copy of a letter dated September 13, 2011, from counsel for the MPUC. The letter states that because no request for reconsideration was filed within ten days of the MPUC's order dated August 23, 2011, the order is final and the 30-day period to appeal the order is running.

5. The requirements of chapter 216E do not apply to the siting of LWECS, except for certain sections including 216E.15. Minn. Stat. § 216F.02(a) (2010).

6. Any applicant, party, or person aggrieved by the issuance of a site or route permit, a certificate of continuing suitability, or a final order in accordance with any rules promulgated by the MPUC, may appeal to the court of appeals in accordance with chapter 14. Minn. Stat. § 216E.15 (2010). The appeal shall be filed within 30 days after publication in the State Register of notice of the issuance of the permit by the MPUC or certification filed with the MPUC or the filing of any final order by the MPUC. *Id.*

7. Under the Minnesota Administrative Procedure Act (MAPA), if a request for reconsideration is made "within ten days after the decision and order of the agency," the 30-day period provided in section 14.63 shall not begin to run until service of the order finally disposing of the application for reconsideration. Minn. Stat. § 14.64 (2010).

8. It is unclear how the MPUC calculated the ten-day period for seeking reconsideration, or when the pending requests for reconsideration were filed.

9. Under section 14.63, a petition for a writ of certiorari must be filed and served on the agency "not more than 30 days after the party receives the final decision and order of the agency." Minn. Stat. § 14.63 (2010).

10. The statute governing judicial review of a decision regarding the siting of LWECs does not state that the 30-day appeal period is commenced by the parties' receipt of the final decision. Instead, the appeal shall be filed within 30 days after publication of the decision in the State Register. Minn. Stat. § 216E.15.

11. It is unclear when the MPUC's decision dated August 23, 2011, was published in the State Register.

12. In a certiorari appeal, the appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute. Minn. R. Civ. App. P. 115.01.

13. As directed below, the parties shall file jurisdiction memoranda on the question of whether the ten-day period to seek reconsideration under Minn. Stat. § 14.64 "after the decision and order of the agency" should be construed as meaning ten days after the decision is published in the State Register.

14. Once a certiorari appeal under MAPA is perfected, the agency's jurisdiction over a pending request for reconsideration is suspended. *Little v. Arrowhead Reg'l Corr.*, 773 N.W.2d 344, 346 (Minn. App. 2009). Even when an appeal is not premature due to a pending request for reconsideration, a pending postdecision motion provides an appropriate basis for deferring appellate review so that the original decision-maker can address the motion. *Id.*

IT IS HEREBY ORDERED:

1. Appeals A11-1681, A11-1689, A11-1691, and A11-1692 are consolidated.

2. On or before October 11, 2011, the parties shall serve and file informal memoranda (an original and four copies) with the clerk of the appellate courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155, which shall address the following:

(a) Is the MPUC required to publish a notice in the State Register of a decision granting a permit to construct an LWECS?

(b) If the answer to (a) is yes, should the time to file a motion for reconsideration within ten days after the decision or order under Minn. Stat. § 14.64 be construed as ten days after notice of the decision is published in the State Register?

(c) Was a timely request for reconsideration filed regarding the MPUC's decision dated August 23, 2011?

(d) If the answer to (c) is yes, should these consolidated appeals be dismissed as premature, to return jurisdiction to the MPUC to rule on the request for reconsideration?

3. Memoranda filed after October 11, or memoranda filed without *four copies* and *proof of service*, may not be considered by the court.

4. Relators' failure to file a jurisdiction memorandum may result in such sanctions as the court deems appropriate, including dismissal of the appeal.

5. This order does not stay or extend briefing deadlines or other procedural requirements under the rules.

Dated: September 30, 2011

BY THE COURT

/s/
Matthew E. Johnson
Chief Judge