

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

November 1, 2011

**OFFICE OF
APPELLATE COURTS**

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

Considered and decided by Johnson, Chief Judge; Wright, Judge; and Connolly,
Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

In an order filed on October 3, 2011, we consolidated these certiorari appeals by Belle Creek Township, Goodhue Wind Truth, Goodhue County, and the Coalition for Sensible Siting (A11-1681, A11-1689, A11-1691, and A11-1692, respectively). Relators seek review of decisions issued by the Minnesota Public Utilities Commission (the MPUC) on August 23, 2011, granting applications by respondent AWA Goodhue Wind, LLC, for a certificate of need and a site permit to construct, operate, maintain, and manage a large wind energy conversion system (LWECS) in Goodhue County. Because relators indicated that their motions for reconsideration were still pending before the MPUC, this court questioned jurisdiction. The MPUC, relators, and respondent AWA Goodhue Wind filed jurisdiction memoranda.

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. The MPUC states that relators filed timely requests for reconsideration regarding the order issued on August 23, 2011, that granted the certificate of need, but that relators' requests for reconsideration were not filed within the time required for reconsideration of the order issued on August 23, 2011, granting the site permit. Although the MPUC argues that the appeal of the August 23 order granting the site permit is not premature, the MPUC and the other parties agree that the appeals should be either dismissed or stayed to allow the MPUC to rule on the pending requests for reconsideration. *See Little v. Arrowhead Reg'l Corr.*, 773 N.W.2d 344, 346 (Minn. App. 2009) (stating that 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).

Within 20 days after the service by the MPUC of any decision constituting an order or determination, any party to the proceeding and any other person, aggrieved by the decision and directly affected thereby, may apply to the MPUC for a rehearing. Minn. Stat. § 216B.27, subd. 1 (2010). Any party to a proceeding before the commission or any other person, aggrieved by a decision and order and directly affected by it, may appeal from the decision and order of the MPUC in accordance with chapter 14. Minn. Stat. § 216B.52, subd. 1 (2010).

Any applicant, party, or person aggrieved by the issuance of a site permit or by a final order of the MPUC, may appeal to the court of appeals in accordance with chapter 14. Minn. Stat. § 216F.02(a) (2010) (incorporating Minn. Stat. § 216E.15). A request for reconsideration may be made within 10 days after the decision and order of the agency. Minn. Stat. § 14.64 (2010). Relators' requests for reconsideration were made within 20 days after issuance of the orders on August 23, 2011, but the MPUC contends that the requests for reconsideration regarding the issuance of the site permit were not timely because they were not made within 10 days after the order as required by Minn. Stat. § 14.64.

The general provisions of chapter 14 do not supersede more specific provisions governing appeals from the public utilities commission. *In re Complaint Against N. States Power Co.*, 447 N.W.2d 614, 615 (Minn. App. 1989), *review denied* (Minn. Dec. 15, 1989). The more specific provision controls. *Id.* Because under Minn. Stat. § 216B.27, subd. 1, the MPUC has jurisdiction to consider requests for reconsideration made within 20 days after service of the decision, relators' requests for reconsideration of both the August 23 order granting the certificate of need and the August 23 order granting the site permit were timely. Therefore, we will dismiss these appeals as premature.

IT IS HEREBY ORDERED:

1. The consolidated appeals are dismissed as premature.

2. If necessary, relators may file new appeals after the Minnesota Public Utilities Commission has ruled on the pending requests for reconsideration. No additional filing fees shall be required for the new appeals. Relators shall file a copy of this order with the appeal papers for the new appeals, if any.

Dated: November 1, 2011

BY THE COURT

/s/

Matthew E. Johnson
Chief Judge