

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: November 10, 2011Agenda Item # 2

Company: AWA Goodhue Wind, LLC

Docket No. IP-6701/CN-09-1186 & WS-08-1233

SUBJECT: In the Matter of the Application of AWA Goodhue Wind, LLC for a Certificate of Need for a 78 MW Goodhue Wind Project and Associated Facilities in Goodhue County

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

Issue(s): Should the Commission reconsider its August 23, 2011 Order Granting Certificate of Need?

Should the Commission reconsider its August 23, 2011 Order Issuing Site Permit as amended?

Should the Commission reopen the record based on the new information provided by petitioners?

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Relevant Documents

Minn. Stat. § 216B.243 & Minn. Rules, Chapter 7849: Certificate of Need

Commission Order Granting Certificate of Need August 23, 2011

Commission Order Issuing Site Permit as Amended..... August 23, 2011

See next page for the list of Petitions for Reconsideration

The attached are workpapers of the Commission Staff and are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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Petitions for Reconsideration

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Statement of the Issue(s)

1. Should the Commission reconsider its August 23, 2011 Order Granting Certificate of Need?
2. Should the Commission reconsider its August 23, 2011 Order Issuing Site Permit as amended?
3. Should the Commission reopen the record based on the new information provided by petitioners?

Laws and Rules

Reconsideration

Minnesota Rules 7829.3000, subp. 2. States that a petition for reconsideration or amendment must set forth specifically the grounds relied upon or the errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Furthermore, Minn. Rule 7829.3000, subp. 6 states that:

The Commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The

Commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

Standards of Review

The first standard of review applied at rehearing or reconsideration is under Minn. Stat. §216B.27, subd. 3 and reads, in relevant part, as follows:

If in the commission's judgment, after rehearing, it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable, the commission may reverse change, modify, or suspend the original action accordingly.

In addition, the standard that would be applied by the appellate courts in review of a Commission's decision is:

In a judicial review under Minnesota Statute sections 14.63 to 14.68, the court may affirm the decision of the agency, remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because of administrative findings, inferences, conclusions, or decisions are:

- a. In violation of constitutional provisions; or
- b. In excess of the statutory authority or jurisdiction of the agency; or
- c. Made upon unlawful procedure; or
- d. Affected by other error of law; or
- e. Unsupported by substantial evidence in view of the entire record as submitted; or,
- f. Arbitrary and capricious.

Reconsideration/Rehearing Process

The process for rehearing is outlined in Minn. Rules, 7829.3000. Minn. Rule 7829.3000 sets out the timing for filing a petition for rehearing, the required content of a petition and the opportunity to answer a rehearing petition. Finally, Minn. Rule 7829.3000 also provides the Commission with the authority and flexibility to decide upon a petition for reconsideration, rehearing or reargument, with or without, a hearing or oral argument.

Procedural Background

On August 23, 2011 the Commission issued its *Order Granting Certificate of Need* to AWA Goodhue , LLC for the 78 MW Goodhue Wind Project in Goodhue County.

On August 23, 2011 the Commission issued its *Order Issuing Site Permit as Amended* to AWA Goodhue , LLC for the 78 MW Goodhue Wind Project in Goodhue County.

On September 12, 2011 Goodhue County, Goodhue Wind Truth, the Coalition for Sensible Siting, Scott Logan, Leanne Husband, Erin Logan, Chris Buck, Connie Ludwig, Sandy O'Neill, Representative Tim Kelly, Jenny Ohnstad, Julie Hunke, Kristi Rosenquist, Bob Rosenquist, Mary Hartman, Bill O'Reilly and Sam Scharpen filed petitions for reconsideration.¹

On September 13, 2011 Belle Creek Township and Jean Shulte filed petitions for reconsideration.²

On September 14, 2011 Thomas Gale and Rochelle Nygaard filed petitions for reconsideration.³

AWA Goodhue, LLC – Project Summary and Background

AWA Goodhue, LLC (Goodhue Wind) is proposing to build a 78 megawatt (MW) CBED wind facility in Goodhue County within a project area of approximately 32,700 acres. The Goodhue Wind Project (Project) would be sited just west of the city of Goodhue in the townships of Belle Creek, Goodhue, Vasa, Minneola and Zumbrota. The Goodhue Wind Project will consist of a combination of 50-1.5 and 1.6 MW GE xle turbines, the height of the turbines approach 400 feet from base to blade tip.

The turbines and associated facilities will be owned and operated by AWA Goodhue Wind. The project's electrical output will be collected at two project substations (north and south) and would connect to the transmission grid through new and existing 69 kilovolt transmission lines. All energy produced by the facility will be sold to Xcel Energy; these PPAs have been approved in Commission dockets 09-1349 (north) and 09-1350 (south). These projects are intended to assist Xcel Energy in meeting their commitment to purchase energy from CBED projects.

Goodhue Wind filed supplemental information in the CN docket in November of 2009 and January of 2010 which made note of the executed PPAs between Xcel Energy and Goodhue Wind, the incorporation by reference of Xcel Energy's 2007 Integrated Resource Plan (IRP), and, as noted above, Goodhue Wind also provided supplemental information on the Permittee's new limited liability corporation name, due to changes in project financing.

On October 24, 2008, Goodhue Wind, LLC (Goodhue Wind) filed a site permit application with the Public Utilities Commission for up to 78 MWs of nameplate wind power generating capacity and associated facilities identified as the Goodhue Wind Project in Goodhue County. On October 19, 2009, Goodhue Wind filed an amended LWECs site permit application.

On November 30, 2009, the Commission issued its Order accepting the application for the Goodhue Wind Project and associated facilities.

On July 21 and July 22, 2010, public hearings were held at the Goodhue High School in

1 Some of the Petitioners (GWT, Goodhue County) also filed motions with the Commission to reopen the record due to new information.

2 Jean Shulte also filed a petition to reopen the record based on new information.

3 Rochelle Nygaard filed a petition and motion for rehearing based on new information. The cover memo to the filing mentioned a difficulty in e-filing the petition.

Goodhue, Minnesota, to receive public testimony on need and siting matters. Approximately 200 persons attended the public hearings, which included one afternoon and one evening session each day, and 56 persons provided oral testimony. Public comments and exhibits were recorded and entered into the record, with additional written comments allowed to be submitted on or before August 6, 2010.

Administrative Law Judge (ALJ) Eric L. Lipman presided over each session of the public hearing on July 21, 2010, and July 22, 2010. The ALJ's *Summary of Public Testimony* was submitted to the Commission on September 7, 2010.

On October 5, 2010, Goodhue County enacted amendments to its Wind Energy Conversion System Ordinances.

On October 21, 2010, the AWA Goodhue Wind Project dockets (Certificate of Need and Site Permit) were presented to the Commission for its consideration.

Commission Referral of Site Permit Application to Office of Administrative Hearings

On October 21, 2011, the Commission addressed the question of the applicability of the requirements of Minn. Stat. 216F.081 [Application of County Standards]. In an order dated November 2, 2010, the Commission determined: "...that it cannot satisfactorily resolve, on the basis of the record before it, all questions regarding the applicability of an ordinance adopted by the Goodhue County Board of Commissioners on October 5, 2010, including whether there is good cause for the Commission not to apply any standards adopted by the Goodhue County Board that are more stringent than the standards currently applied to LWECS by the Commission." Therefore, the Commission referred the Site Permit Application to the Office of Administrative Hearings (OAH) for a contested case proceeding to develop the record and to receive the ALJ's recommendations on the issues identified in its Notice and Order.

In a related order, dated November 5, 2010, the Commission decided to delay consideration of the CN docket decision (IP-6701/CN-09-1186) pending consideration of the ALJ's recommendations regarding the site docket (IP-6701/WS-08-1233).

A contested case hearing was held from March 15-17, 2011, at the Offices of the Minnesota Public Utilities Commission. The OAH record closed on April 8, 2011. Five parties participated in the hearing. EFP staff was a participant in these hearings, asking questions of witnesses as is typical in Power Plant Siting Act contested proceedings, but did not appear as a party in the proceeding.

On April 29, 2011, Kathleen D. Sheehy, Administrative Law Judge, filed with the Commission the ALJ's Findings of Fact, Conclusions and Recommendations regarding "good cause" 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 (Docket Number(s): OAH 3-2500-21662-2 and PUC IP-6701/WS-08-1233).

Petitions for Reconsideration

GOODHUE COUNTY – took issue with several aspects of the Commission’s Order. The County provided a Petition for Reconsideration and Memorandum in Support. The areas of contention identified by the County include the following:

1. The Administrative Law Judge misstated the legal standard of “good cause” and the Findings herein apply the erroneous definition. Good cause means the Applicant must show that the County’s ordinance is wrong, not that the County must demonstrate that its standards are right;
2. The Commission’s Order misstates the “good cause” standard and uses language that suggests the County must establish that their standards are necessary;
3. The Eagle, Shrike and Bat Protection Plan has been violated before it was completed;
4. Violations of statutory limitations on additions to the record after hearing resulted in unlawful Findings of Fact and cannot form the basis of a valid Order;
5. The County’s stray voltage testing requirements are supported by the facts in the record and should be reinstated;
6. Information regarding the Renewable Energy Standards, Certificate of Need and Community Based Energy Development (C-BED) conflict, and must be clarified and supported by the facts or the C-BED determination is unlawful and cannot form the basis of issuance of a certificate of need;
7. The setbacks in the Goodhue County Ordinance are supported by facts in the record and in the present Findings and should be reinstated.

COALITION FOR SENSIBLE SITING – took issue with several aspects of the Commission’s Order. The areas of contention raised by the Coalition are as follows:

1. The PUC Site Permit Order is unsubstantiated by the facts, testimony and evidence introduced during the review process and cited by the Commission.
 - A. There is not good cause not to adopt Goodhue County’s more stringent standards;
 - B. The PUC violated Minn. Stat. § 14.61 when it used testimony from Wind on the Wires to support its decision;
 - C. The PUC failed to address changes in Project ownership that negated its CBED status for this decision.
2. Environmental Review for the proposed Project was inadequate and fails to take new information into account.
 - A. The basic requirements of environmental review are clearly stated in statute and rule;
 - B. New data on bald eagles must be considered by the PUC to meet the environmental review requirements for the Project;

The Coalition included one additional item in its conclusion that was not discussed in the text of its petition. Item #3 in the conclusion section states:

3. Make a formal Finding of Fact that the Commission has not adopted siting standards for wind projects greater than 25 MW and delete every reference in the Site Permit Order to the Order in docket 07-1022.

GOODHUE WIND TRUTH also took issue with several aspects of the Commission's Order. With respect to the certificate of need, Goodhue Wind Truth requested 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;
3. Find that the Environmental Report is not adequate because it was not filed in the correct docket; direct that it be filed correctly prior to any Commission determination on the adequacy of environmental review; and
4. Such other relief as is warranted.

With respect to the Site Permit, GWT requested 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;
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;
3. Reject the EFP Staff "Findings of Fact, Conclusions of Law and Order" and incorporate specific findings into the Commission's Order;
4. Make a formal Finding that the AWA Goodhue Wind Project is not a C-BED project;
5. Delete references to Wind on the Wires in the Order and all Conclusions dependent on that reference;
6. Amend Findings to include the many procedural steps taken by Goodhue County in enacting its Wind Ordinance;
7. Delete Findings and Amendments to Order not discussed during Commission deliberations;
8. Find that the Environmental Report is not adequate because it was 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.

BELLE CREEK TOWNSHIP – took issue with the Commission’s interpretation of the “good cause” provision and argued that there is no good cause for not following the standards in the County’s wind ordinance. Specifically, the Township requested that the Commission reconsider its decision of June 30, 2011 and take one of the following actions:

1. Find that there is not good cause to not apply the standards in the Goodhue County Wind Ordinance to the Project, and amend the Site Permit to require compliance with said standards; OR
2. Find that there is not good cause to not apply the waivable 10RD setback from non-participating dwellings, and amend the Site Permit to require compliance with a waivable 10RD setback from non-participating dwellings; OR
3. Amend Section 4.2 of the Site Permit to establish the 6RD setback from nonparticipating dwellings as the absolute minimum setback, and eliminate the option for the Applicant to request a reduction to 5RD from the Commission.

In conclusion, the Township argued that the Minnesota Legislature granted counties the authority to adopt wind ordinances in order to protect the health and safety of its citizens, and Belle Creek Township respectfully requests that the Commission reconsider its Order in this matter, and amend the Site Permit to apply the standards contained in the Goodhue County Wind Ordinance. In the event that the Commission does not apply the standards in the Goodhue County Wind Ordinance, Belle Creek Township requests that the Site Permit be amended to establish the 6RD setback from nonparticipating dwellings as a non-waivable minimum requirement.

INDIVIDUAL PETITIONERS

Scott Logan - questioned the accuracy and competency of Westwood’s avian assessments of the site for AWA Goodhue and stated that Westwood Professional Services have not met the guidelines of the Wind Turbine Guidelines Advisory Committee (WTGAC) as they have claimed. Mr. Logan argued that his suspicions were confirmed in the report on Preconstruction Avian and Risk Assessment in which Westwood noted that “The early spring may have caused birds to migrate earlier than normal. The combination of the early spring and the lack of suitable stopover habitat for bird groups that typically flock (i.e., ducks, geese, song-birds) helps explain the lack of migratory observations at Goodhue Wind Project during Spring 2010.

Mr. Logan petitioned the Commission to amend the site permit to require AWA Goodhue Wind to complete accurate, pre-construction, spring (2012) and fall (2011 or 2012) avian migration surveys, and to require all field avian and bat surveys be completed and impacts estimated prior to construction starting. These conditions would follow the WTGAC guidelines.

Leanne Husband – questioned the requirement in Section 6.2 of the Permit that “the Permittee make a good faith effort to mitigate shadow flicker including but not limited to timed suspension, trees as buffers, and shades.” Ms. Husband argued that the term “good faith effort” leaves too

much room for the developer to interpret the requirement so that non-participating landowners will not have shadow flicker mitigated to the fullest extent.

Ms. Husband requested that the Commission amend the site permit as follows: “If trees are chosen for shadow flicker mitigation, they need to be of sufficient size and quantity to immediately act as a mitigation measure. These trees may be located on adjacent and nearby land with signed participation and easement agreements in order to mitigate shadow flicker on non-participating landowner’s property. These trees will be maintained and replaced as necessary by the Permittee throughout the life of the project.”

Erin Logan - requested that the Commission revise the AWA Goodhue Wind site permit to reflect the following changes to Sections 4.2 **Residences** and 4.3 **Noise** of the permit:

4.2 Residences

The Permittee shall ~~make a good faith effort to meet the setback requirements of the Goodhue County Ordinance by attempting in good faith to negotiate waivers from those affected by the 10 RD setback but in no event shall wind turbines be located closer than 6 RD from the residences of non-participating residents without further review by the Commission.~~

4.3 Noise

The wind turbines shall be placed such that the Permittee shall comply with noise standards established ~~as of the date of this permit~~ by the PCA at all times at all appropriate locations. The noise standards are found in Minnesota Rules Chapter 7030. ~~Turbine operation shall be modified or~~ Turbines shall be removed from service if they do not ~~necessary to~~ comply with these noise standards. The Permittee or its contractor may install and operate turbines, as close as the minimum setback required in this permit but in all cases shall comply with PCA noise standards. The Permittee shall be required to comply with this condition with respect to all homes or other receptors in place as of the time of turbine construction, ~~but not with respect to such receptors built after construction of the towers.~~

Chris Buck – expressed concern with the number and timing of avian data collection activities. Mr. Buck petitioned the Commission to reconsider its decision and amend Sections 13.1.1 **Eagles** and 13.1.2 **Bats** to require the results of seasonal eagle surveys and bat monitoring requirements be provided before any pre-construction activities or actual construction begins.

Connie Ludwig – took issue with Section 6.6 of the permit. Section 6.6 requires the Permittee to conduct a post-construction noise study. Ms. Ludwig took issue with the competency and objectivity of the Permittee and its consultants. Ms. Ludwig proposed that the Commission amend the Site Permit to pay for the Minnesota Pollution Control Agency to conduct post-construction sound testing. The studies should be conducted during different times of the year under different atmospheric conditions.

Sandy O’Neill – Ms. O’Neill proposed the following language changes to Section 7.15 of the Site Permit:

Public Safety

The Permittee shall provide educational materials to landowners and residents within the site boundary and to those landowners and residents within a one-mile buffer outside the site boundary zone and, upon request, to interested persons, about the project and any restrictions or dangers associated with the project. These educational materials will be provided to all landowners before they sign contracts as participants. All residents and landowners in the site boundary and within the one-mile buffer zone will be provided the same educational materials before any project applications are made with the state of Minnesota

Representative Tim Kelly – expressed his concern that the Certification of the AWA Goodhue Wind project as a Community-Based Energy Development (C-BED) is suspect given the current ownership structure that it is suspect and should be further investigated. Representative Kelly requested that the Commission reconsider the certificate of need granted to AWA Goodhue because of apparent violations of Minn. Stat. § 216B.1612. Potential violations of the statute include:

- The principle place of business is not in the state of Minnesota ... (Subd. 2(c));
- A single beneficiary owns more than 15 percent of a C-BED project ... (Subd. 2(h)1);
- Given the current ownership of the project, uncertain whether 51 percent of the present value of gross revenues are qualifying revenues ... (Subd. 2(h) 2); and
- Permittee failed to offer all affected residents an opportunity to participate in the project violating the intent and requirements of Minn. Stat. § 216B.1612

Representative Kelly argued that the Permittee provided testimony in the recent contested case proceeding that AWA Goodhue's operations are based in Dallas, Texas. The Permittee further testified to ownership levels that are in violation of the C-BED statute. Furthermore, AWA objected to providing information to confirm that at least 51 percent of the net present value of the gross revenues would comply with the statute.

In conclusion, Representative Kelly urged the Commission to investigate and evaluate the C-BED certified status of the project.

Jennifer Ohnstad – expressed concern with the 20 day time frame for filing petitions for reconsideration. Petitions for reconsideration are required to be filed within 20 days of the date of the Order on a project.⁴ Also, under the rules the Permittee is required to mail a copy of the permit to landowners. Ms. Ohnstad requested that the Commission extend the period for filing for reconsideration for up to 50 days in order for all residents to receive a copy of the permit and have sufficient time to draft and file a petition. Ms. Ohnstad also expressed concern with the objectivity of “state staff.”

Julie Huneke – took issue with Section 6.2 of the site permit on Shadow Flicker. Section 6.2 reads as follows:

⁴ On September 8, 2011 AWA Goodhue, LLC filed a compliance filing indicating local government units had been provided with a copy of the Site Permit. On September 20, 2011 AWA Goodhue, LLC filed a compliance filing indicating that landowners had been provided Notice and a copy of the Site Permit.

The Permittee shall make a good faith effort to mitigate shadow flicker including but not limited to timed suspension, trees as buffers, and shades. Additionally, at least ten (10) working days prior to the pre-construction meeting, the Permittee shall provide data on shadow flicker impacts on each residence of non-participating landowners and participating landowners. Information shall include the results of modeling used, assumptions made, and the anticipated duration of shadow flicker for each residence. The Permittee shall provide documentation on its efforts to avoid, minimize, and mitigate shadow flicker impacts.

Mrs. Huneke complained that the public would not be allowed to review or comment on the results of the Shadow Flicker analysis or any mitigation efforts proposed by the Permittee.

To address this concern, Ms. Huneke proposed to amend Section 6.2 of the permit to require the Permittee to provide the results of its shadow flicker analysis and proposed mitigation for each property to each non-participating residence at least 10 days before the pre-construction meeting and to allow residents 20 days to comment and suggest changes on proposed shadow flicker mitigation steps for their property.

Kristi Rosenquist – took issue with Section 4.2 of the Site Permit on Residences. Mrs. Rosenquist argued that the current Minnesota Pollution Control Agency noise standards, used by the Commission as a baseline for siting wind turbines, does not protect the safety of the public because those standards do not account for low-frequency or impulsive sound produced by large industrial wind turbines.

Mrs. Rosenquist reiterated the conclusions and Recommendations of the Minnesota Department of Health in its White Paper – Public Health Impacts of Wind Turbines submitted to the Commission on May 22, 2009. Because the MPCA Noise Standards do not take into consideration the low-frequency, infrasound or impulsive noise, the Commission should adopt the 10 rotor diameter setback from non-participating residences in the Goodhue County Ordinance. Mrs. Rosenquist recommended that Section 4.2 be amended to read:

The Permittee shall meet the setback requirements of the Goodhue County Ordinance of 10 RD from non-participating residences unless a waiver has been signed by the property owner. ~~make a good faith effort to mitigate shadow flicker including but not limited to timed suspension, trees as buffers, and shades. Additionally, at least ten (10) working days prior to the pre-construction meeting, the Permittee shall provide data on shadow flicker impacts on each residence of non-participating landowners and participating landowners. Information shall include the results of modeling used, assumptions made, and the anticipated duration of shadow flicker for each residence. The Permittee shall provide documentation on its efforts to avoid, minimize, and mitigate shadow flicker impacts.~~

Bob Rosenquist – took issue with induced and stray voltages. Specifically, Mr. Rosenquist indicated that the Commission is failing to protect the safety of the citizens by adopting DOC-EFP proposed Finding of Fact #83 on stray voltage. Finding #83 which states that under normal

operation, there are no ground currents on the collection system. Finding of Fact #83 is provided in its entirety below. The language objected to by Mr. Rosenquist as false is in bold. Finding #83 reads as follows:

Because of the type of transformers used at each turbine and the design of the collection system, there are no ground currents in the collection system, whether the system is operating at zero generation or maximum generation. Therefore, **under normal operating conditions, the grounding for the wind farm collection system has no current with which to create stray voltage.** (Exhibit 21, citing AWA 4)

Mr. Rosenquist argued that there is induced voltage that enters the ground from the turbine under normal or standard operations. Mr. Rosenquist cited information from a representative of General Electric, a report on field tests on GE turbines and two reports from Wind farms in Minnesota (Grand Meadows and Nobles Wind) which discussed situations in which current enters the ground from turbines. Finally, Mr. Rosenquist described his efforts to find an answer to the question: “What happens to the 1200 volts and 60 amps of induced current that is sent into each wind turbine’s grounding system?” Mr. Rosenquist has asked this question several times to several different people and has yet to receive a satisfactory answer.

Mr. Rosenquist recommended that the Commission revoke the Site Permit until questions related to induced voltage are answered.

Thomas Gale – took issue with statements in the Environmental Report that “there is no current going into the ground during routine operations” and that “the LWEC’s system ‘cannot possibly’ cause stray voltage.” Mr. Gale then cited to the recent experience at the Nobles Wind Energy Project with high electrical currents and resulting varying degrees of heat damage to cables, transformers and internal wiring and the recent explosion and fire of a pad mount transformer and partial discharge activity due to faulty cable insulation.

Mr. Gale urged the Commission to reconsider the site permit for the project in order to protect the citizens of Goodhue County. Mr. Gale recommended that the site permit include the Goodhue County Ordinance requirement of pre- and post-construction stray voltage testing.

Mary Hartman – took issue with the Commission granting the Site Permit before the avian and bat studies are completed. Mrs. Hartman argued that AWA Goodhue has had years to conduct the studies necessary and has failed to do so. She questioned the integrity and honesty of AWA Goodhue and has asserted that it has ignored the guidelines and recommendations of the United States Fish and Wildlife Service (USFWS) regarding pre-construction avian and bat studies of the project area. Mrs. Hartman provided several examples of recommendations provided by USFWS and ignored by the Permittee.

Mrs. Hartman also suggested that the staff of both the DOC-EFP and PUC were biased toward project approval rather than acting in a neutral fact-finding capacity and provided examples of the bias perceived.

Mrs. Hartman also asserted that a helicopter was in the project area flying near an active bald eagle nest, which resulted in significant damage. Mrs. Hartman alleged that the incident was an effort in “hazing” the eagle’s nest in an attempt to force the bird to leave.

In conclusion, Mrs. Hartman recommended that the Commission revoke the Site Permit.

Bill O’Reilly – expressed his concern regarding the potential for a decline in the value of property in the area around a large wind farm. Mr. O’Reilly took issue with statements made by DOC-EFP staff regarding potential effects on property values and which studies are appropriate to use as a reference.

Mr. O’Reilly requested the Commission reconsider the Order Granting a Site Permit as Amended and rescind the AWA Goodhue Site Permit

Sam Scharpen – expressed his concern that the site permit does not contain a provision addressing the setback from snowmobile trails for safety reasons. Mr. Scharpen recommended that a permit condition to address trail setbacks. Mr. Scharpen recommended the language from Site Permit for the West Stevens project. The language reads as follows:

M. Setbacks from Snowmobile Trail

The Permittee shall comply with its commitment to provide a minimum setback of 250 feet from roads including the existing West Central Trailblazers snowmobile trail located in the project boundaries. Adoption of this special condition is based on facts associated with this docket and provides no precedent or prediction regarding the size of setback that the Commission may deem appropriate and reasonable to require in future dockets.

Jean Schulte – petitioned for reconsideration and presented a motion for rehearing based on new information. Mrs. Schulte provided information on wind development and health issues from the August 2011 issue of the *Bulletin of Science Technology & Society*. Mrs. Schulte argued that this evidence provides more support to the theory that adverse health effects result from living in close proximity to wind turbines.

Specifically, Mrs. Schulte provided the following articles:

- Assessing Our Ability to Design & Plan Green Energy Technologies;
- Noise from Wind Turbines Potential Adverse Impacts on Children’s Well-Being;
- Infrasound from Wind Turbines Could Affect Humans;
- Industrial Wind Turbine Development and Loss of Social Justice;
- WindVOiCe, A Self-Reporting Survey: Adverse Health Effects; Industrial Wind Turbines and the Need for Vigilance Monitoring ;
- Toward a Case Definition of Adverse Health Effects in the Environs of Industrial Wind Turbines;
- Public Health Ethics, Legitimacy, and Challenges of Industrial Wind Turbines;
- Properly Interpreting Epidemiologic Evidence About the Health Effects of Industrial Wind Turbines on Nearby Residents; and

- Wind Turbine Noise.

Rochelle Nygaard – expressed her concern that the value of property is severely impacted by the development of a large wind energy facility. Mrs. Nygaard provided two recent studies on the impact of wind turbines and property values. These studies indicate that property values in or near a wind project decrease substantially, between 20–40 percent. Mrs. Nygaard requested that the record be re-opened to address property values, including the consideration of a property value assurance and compensation as a means of mitigation.

AWA GOODHUE WIND, LLC - RESPONSE

Regarding legal issues, AWA Goodhue argued that:

- The Commission properly applied the “good cause” standard of Minn. Stat. 216F.081;
- The General Permit Standards provide a sufficient basis for determining site permit conditions for the AWA Goodhue project;
- The environmental review of the project conforms with Minnesota Law; and
- Untimely petitions should not be considered.

With respect to the factual issues raised by petitioners, AWA Goodhue argued that:

- The Commission considered all record evidence and included reasonable conditions addressing bald eagles, loggerhead shrike, bats and other wildlife issues;⁵ and
- 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.

Finally, AWA Goodhue stated that it ``

AWA Goodhue requested that the Commission deny the petitioners’ requests for amendment and/or reconsideration.

Staff Discussion

Overview of Certificate of Need and Site Permit Orders

The Commission’s *Order Granting Certificate of Need* was issued on August 23, 2011. The Order made findings on the four criteria for issuing a certificate under Minn. Rule 7849.0120. The Order addressed the other statutory criteria not covered in the rules, and found that the Environmental Report on the Project adequately addressed the issues identified in the Department’s Scoping Decision. The order was similar in content to other orders granting certificates of need to large wind-energy projects. There is nothing particularly unique about the AWA Goodhue Wind, LLC Order.

⁵ AWA Goodhue stated that it was not responsible for, nor knowledgeable of, any helicopter activity in the area. (See M. Hartman Petition above.)

The Commission's *Order Approving Site Permit as Amended* was issued on August 23, 2011. In its decision the Commission adopted the majority of the Findings and Conclusions of the ALJ. The major exception was the issue of whether Minn. Stat. §§ 216F.08 and 216F.081 are in conflict, and whether Minn. Stat. §§ 216F.081 should be given a meaning other than its plain meaning. The Commission found no ambiguity in, or conflict between, either of the statutory provisions.

With respect to the draft Site Permit, the Commission amended six provisions. These amendments included additional language to Section 4.2 of the permit to require the Permittee to make a good faith effort to meet the setback requirements of the Goodhue Ordinance, and established a minimum setback distance of 6 rotor diameters from non-participating residences. Also, the Commission amended Section 6.2 of the Site Permit to require the Permittee to make a good faith effort to mitigate shadow flicker. In addition, the Commission amended the draft site permit to address avian and bat issues, by requiring Commission approval of the protection plan and by prescribing the timing of future submissions of avian and bat surveys of the project area.

With respect to the Findings proposed by the DOC-EFP Unit, the Commission adopted the majority of those Findings. The changes made by the Commission include the deletion of Finding 100 and minor modifications or clarifications to three others.

Reconsideration Petitions

Overview

There were several legal issues raised in the petitions for reconsideration. The legal issues include the statutory interpretation of Minn. Stat. § 216F.081 and the “good cause” analysis performed by the ALJ and Commission and whether the Commission has existing siting standards. Staff recommends the Commission consult with Commission Counsel on the merits of the legal arguments raised in the petitions.

Staff will not address each of the issues raised in the petitions for reconsideration. They are too numerous. However, there are several issues that may benefit from additional discussion or clarification. Staff has attempted to keep separate the issues that are CN versus site permit-related. Regarding the issue of the C-BED status of the project, staff discusses that issue in the site permit section of the paper.

Certificate of Need

Seven persons or parties filed petitions for reconsideration of the *Order Granting Certificate of Need*. The majority of these filings (5 of 7) were copies of the reconsideration petitions submitted in the siting docket and the discussion contained in the petition was siting-related only, or the issue was unrelated to the merits of the certificate of need⁶. Under the certificate of need,

⁶ Mary Hartman, Bill O'Reilly and Coalition for Sensible Siting petitions were same as in siting; Thomas Gale raised only siting-related issues; Rep. Kelly raised C-Bed Status. Only GWT raised issues CN-related.

staff will address only the issue of whether the Environmental Report is officially in the record of the certificate of need proceeding.

One of the issues raised by Goodhue Wind Truth under the certificate of need was the validity of the environmental report and whether it had been filed in the certificate of need docket. GWT argued that the Report was efiled in the Siting docket only and therefore could not be accepted within the context of the certificate of need. While the ER was not separately efiled in the CN docket, it was submitted to ALJ Lipman and entered into the record at the time of the public hearing on the project. Staff agrees that the ER should have been efiled separately in the CN docket as is the usual practice, but does not believe any harm has occurred given the Reports prominence in the proceedings and its dissemination to parties and an extensive list of members of the public in the siting docket. The ER is in the CN record as Exhibit QQ.

Site Permit

a. Introduction

There are very few provisions of the Commission's decision and resulting site permit which have not been petitioned for reconsideration. There are twenty-one siting reconsideration petitions. The petitions included issues ranging from the definition, and use, of the "good cause" provision in the Order, the current C-BED status of the Permittee, the reference to the comments of Wind on the Wires, as well as the timing for filing petitions for reconsideration themselves, to findings made on property values, noise standards, shadow flicker, stray voltage, turbine setbacks from residences and whether the avian and bat surveys should be completed before a permit is granted. The Commission also received a petition for reconsideration to add a new condition to the permit that requires a significant setback from snowmobile trails for safety reasons.

b. C-Bed Status

Representative Tim Kelly filed a petition requesting that the Commission reconsider the certificate of need decision until the C-BED status of the project has been further investigated. (Goodhue Wind Truth, among other issues, also raised the issue of C-Bed qualification.) Both entities indicated that statements were made by representatives of the project during the contested case proceeding that indicate a change in the ownership structure has occurred and AWA Goodhue may no longer qualify as a C-BED project. No additional information was provided into the record which might have clarified the Permittee's C-BED status under the new ownership structure.

Nevertheless, without commenting on the merits of the petitions, staff indicates that the C-BED status of the Permittee was determined in separate dockets during the review of the Power Purchase Agreements between the Permittee and Xcel Energy. The certificate of need review process is indifferent to the C-BED status of a project. The information required for a certificate of need, as well as the criteria the Commission uses to make a determination on need, are the same whether the project is C-BED qualified or not.

Staff does not believe the CN or the Siting dockets are the appropriate forums for reviewing the

C-BED status of the project. Should they decide to pursue the matter, Representative Kelly and GWT should file a petition in the PPA dockets requesting further investigation into the C-BED status of AWA Goodhue. The PPA dockets are E-002/M-09-1349 and 09-1350. In addition, if the Commission agrees that the change in ownership and the statements made in the contested case proceeding raise questions regarding the C-BED status of the project the Commission can, on its own motion, direct that the issue be further addressed in the PPA dockets.

c. Wind on the Wires Citation

A couple of the parties raised concerns regarding the Order's reference to the comments submitted on the day of the meeting from Wind on the Wires. WoW expressed its concern that a 10 rotor-diameter setback from non-participants near the Goodhue project, may result in confusion, concern and uncertainty on the part of wind project developers and may hinder the efforts of Minnesota utilities to meet their milestones under the Renewable Energy Standards.

Parties expressed their concern that WoW had not participated in the proceeding and the Commission should not have cited them in the Order. Staff believes the comments were identified in the Order because the issues raised by them are representative of additional statutory and policy concerns the Commission must consider in making its decisions on permitting wind project. While Wind on the Wires has a long history of participating in proceedings in front of the Commission, staff believes the petitioners over-estimate the impact and influence of the comments in the Commission's decision-making.

d. GWT Suggestion on DOC-EFP Findings

Goodhue Wind Truth recommended that the Commission remove the Findings recommended by the DOC-EFP in its comments and recommendations for this proceeding. GWT argued that parties did not have sufficient opportunity to review and comment on their substance and that several of the findings don't cite where in the record they are based. GWT listed the findings that were not supported by citations to the record. In addition, GWT identified documents which the DOC-EFP cited to, but that were not in the record. GWT recommended that only findings that were specifically addressed by the Commission during the hearing should be adopted.

The DOC-EFP has always provided proposed findings in the briefing papers it develops for facilities docket. Like a staff briefing paper, parties or persons generally have a week to review the DOC-EFP submission and an opportunity to provide oral comments on them at the Commission meeting or, if necessary, request reconsideration on the specific findings objected to. Staff believes that most of the proposed findings are noncontroversial and it would be inappropriate and inefficient to accept GWT's recommendation to require that in order for a finding to be adopted it must be specifically be discussed and addressed by the Commission.

Staff believes that both Orders on the Goodhue project are reasonable and appropriate and that the petitioners have provided no evidence to the contrary. Staff also believes that the Commission's decisions are consistent with the facts, the law and the public interest. However, only the Commission can determine whether it has been persuaded to reconsider its decision.

Decision Alternatives

1. Reconsideration of Certificate of Need
 - A. Grant reconsideration of the August 23, 2011 Order Granting Certificate of Need with Conditions based on one or more of the petitions. If the Commission reconsiders its decision, the Commission could:
 - e. Rehear the issues today;
 - f. Rehear the issues at another time;
 - g. Amend the Order Granting Certificate of Need; or
 - h. Clarify the Order Granting Certificate of Need
 - B. Decline to reconsider the August 23, 2011 Order Granting Certificates of Need with Conditions.
2. Reconsideration of Site Permit
 - A. Grant reconsideration of the August 23, 2011 Order Granting Site Permit as Amended. If the Commission reconsiders its decision, the Commission could:
 - a. Rehear the issues today;
 - b. Rehear the issues at another time;
 - c. Amend the Order Issuing Site Permit as Amended; or
 - d. Clarify the Order Issuing Site Permit as Amended
 - B. Decline to reconsider the August 23, 2011 Order Granting Site Permit as Amended.
3. Motion to Reopen Based on New Information
 - A. Grant the motion to reopen the record based on new information. Provide further procedural direction on the process to be followed and the issues to be addressed.
 - B. Deny motions to reopen the record.

Recommendation

Staff recommends alternatives 1B, 2B and 3B.