

STATE OF MINNESOTA  
IN COURT OF APPEALS



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In the Matter of the Application of  
AWA Goodhue Wind, LLC for a Certificate  
of Need for a 78 MW 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 Megawatt Large Wind  
Energy Conservation System Project in  
Goodhue County.

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**ORDER**  
**A11-2228**

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

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

This certiorari appeal was filed on December 12, 2011. Relator Goodhue Wind Truth seeks review of decisions issued by the Minnesota Public Utilities Commission (the MPUC) on August 23, 2011, and the MPUC's order issued on November 14, 2011, denying petitions to reconsider the August 23, 2011 decisions.

On December 27, 2011, respondent AWA Goodhue Wind, LLC (AWA Goodhue) filed a motion to dismiss the appeal on the ground of relator's failure to timely serve the petition for the writ of certiorari on the MPUC by either personal service or certified mail. No response to the motion to dismiss has been filed.

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. Any party to a proceeding before the MPUC 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).

The appeal period is governed by the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.63-.69 (2010). MAPA provides that an aggrieved person may appeal from an administrative decision by filing a petition for certiorari with the court of appeals and serving it on the agency within 30 days of receiving the final decision and order of the agency. Minn. Stat. § 14.63. If a timely request for reconsideration is made, 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.

The MPUC served the order dated November 14, 2011, denying the petitions for reconsideration by United States mail on November 14. Because the order denying reconsideration was served by United States mail, three days were added to the 30-day appeal period under Minn. R. Civ. App. P. 125.03. The 33rd day after the order was served by mail on November 14 fell on Saturday, December 17, 2011. Therefore, the appeal period expired on Monday, December 19, 2011. Minn. R. Civ. App. P. 126.01.

Proceedings for review under sections 14.63 to 14.68 are instituted by serving a petition or a writ of certiorari personally or by certified mail upon the agency. Minn. Stat. § 14.64. Relator served the petition for the writ of certiorari on the MPUC by first-

class mail on December 13, 2011. Relator did not serve the petition for the writ on the MPUC by either personal service or by certified mail.

To appeal under MAPA, service must be made within the statutory 30-day appeal period either personally or by certified mail. *In re Risk Level Determination of J.M.T.*, 759 N.W.2d 406, 408 (Minn. 2009). Service by first-class mail is not effective service under the statute. *Id.* “[T]he court of appeals lacks jurisdiction to adjudicate administrative appeals not served in accordance with the requirements of MAPA.” *Id.*

The appellate court is prohibited from extending the time prescribed by law for securing review of a decision or order of an administrative agency. Minn. R. Civ. App. P. 126.02. Because relator failed to timely serve the petition for the writ of certiorari on the MPUC by either personal service or certified mail, we must dismiss the appeal.

**IT IS HEREBY ORDERED:**

1. The motion by respondent AWA Goodhue Wind, LLC to dismiss the appeal is granted.
2. The writ of certiorari is discharged.

Dated: January 24, 2012

**BY THE COURT**

/s/ \_\_\_\_\_  
Matthew E. Johnson  
Chief Judge