

**FILED**

February 23, 2012

**OFFICE OF  
APPELLATE COURTS**

**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

**ORDER**

#A11-2229

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.

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

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

Respondent AWA Goodhue Wind is the permit holder for a wind project in  
Goodhue County. Relator Coalition for Sensible Siting (CSS) brought this appeal in a  
timely fashion and has now served and filed its brief on the merits.

Goodhue Wind Truth (GWT) brought a separate appeal (A11-2228), which was  
dismissed for lack of jurisdiction. This court concluded that GWT failed to perfect that  
appeal in a timely fashion. The supreme court has held that this court lacks jurisdiction  
to consider a certiorari appeal that was not served personally or by certified mail within

the applicable 30-day appeal period. *In re Risk Level Determination of J.M.T.*, 759 N.W.2d 406, 408 (Minn. 2009).

***Motion to intervene or participate as amicus curiae***

After the appeal by GWT was dismissed, GWT filed a motion in this appeal to intervene or to participate as amicus curiae. The permit holder opposes the motion.

The motion by GWT does not address the criteria for intervention on appeal. *See In re Crablex, Inc.*, 762 N.W.2d 247 (Minn. App. 2009), *review denied* (Minn. Apr. 29, 2009). Nor does GWT acknowledge that intervention is usually limited to those who were not parties to the underlying proceeding. GWT was a party to the agency proceedings and to appeal A11-2228. But this court has already concluded that it lacks jurisdiction to entertain the appeal by GWT. GWT also failed to establish that intervention is appropriate. GWT failed to respond to the motion to dismiss appeal A11-2228 in a timely fashion and it did not seek to intervene in this appeal until its own appeal had been dismissed and the deadline for the brief by relator CSS was imminent. Unlike the appealing party in *Crablex*, relator CSS has not abandoned this appeal. And relator CSS is specifically arguing that the MPUC applied the wrong standard when it declined to impose a setback requirement consistent with the Goodhue County ordinance, one of the same issues that GWT seeks to raise. Accordingly, because there has been no showing that relator CSS is not adequately representing the interests at stake in this appeal and the application for intervention appears to be an improper attempt to

circumvent this court's ruling that it lacks jurisdiction to entertain an appeal by GWT, intervention is not warranted.

GWT made an alternative request for leave to proceed as amicus curiae. The motion is untimely under Minn. R. Civ. App. P. 129.01, but respondents' briefs have not yet been filed, and it does not appear that a short delay will cause prejudice. But the proffered amicus brief by GWT improperly raises arguments beyond those identified by relator. *See Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888, 898 n.7 (Minn. 2006) (declining to reach "additional issues" raised by amicus curiae, but not by appealing party). The prayer for relief in the proffered amicus brief is also improper, because requests for a "declaratory judgment" or an order compelling the agency to engage in rulemaking are beyond the scope of this certiorari appeal. Accordingly, we will condition permission to participate as amicus curiae on the timely service and filing of an amended brief that omits these issues.

***Motion for expedited handling***

The permit holder moves for expedited scheduling of oral arguments and for the filing of a decision within 30 days after arguments. The agency decision that is the subject of this appeal has not been stayed. And the impact of ongoing litigation on project financing is not within the scope of this appeal. Responsive briefs in this appeal are currently due on March 5, 2012. Even after a decision is filed by this court, this litigation will not be final until the deadline to seek further review in the supreme court

has passed and any petition for further review is decided. Accordingly, it is not feasible to ensure finality before June 2012, as requested in the motion.

**IT IS HEREBY ORDERED:**

1. The motion by Goodhue Wind Truth to intervene is denied.
2. The motion for leave to participate as amicus curiae is granted. As a condition of that participation, Goodhue Wind Truth shall serve and file an amended amicus brief by February 29, 2012. The brief may be served and filed by mail, but if served by mail, a copy shall also be provided electronically (by facsimile or e-mail) to all counsel, to ensure that respondents *receive* that brief no later than 5 p.m. on February 29, 2012. The amended brief shall not raise legal issues beyond those identified in relator's brief (including the issue relating to siting standards included in Part II of the proffered brief) and shall not seek relief beyond the scope of this certiorari appeal.
3. The proffered intervenor/amicus brief received by the clerk of the appellate courts on February 8, 2012, is stricken and will not be considered on appeal.
4. All respondents' briefs shall be served and filed by March 9, 2012.
5. The motion by AWA Goodhue, LLC for expedited argument and disposition is granted in part and denied in part.
6. The scheduling of oral arguments will be expedited. Scheduling will occur promptly after submission of the brief by AWA Goodhue. All counsel are reminded of their obligation to provide written notice of potential scheduling conflicts limiting their

availability. Notices received by March 7, 2012 will be accommodated in scheduling this case for arguments. Once scheduled, postponement will be permitted only in the event of unforeseen emergency.

7. The motion for issuance of a decision in this matter within 30 days after argument is denied.

Dated: February 22, 2012

**BY THE COURT**

/s/  
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Matthew E. Johnson  
Chief Judge