



April 17, 2013

Via Electronic Filing

Dr. Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, Minnesota 55101

REPLY COMMENTS OF NEW ERA WIND FARM, LLC TO COMMISSION ORDER OF  
MARCH 20, 2013 -- LARGE WIND ENERGY CONVERSION SYSTEM (LWECS) SITE  
PERMIT AND CERTIFICATE OF NEED EXTENSION FOR THE 78 MW AWA GOODHUE,  
LLC WIND FARM IN GOODHUE COUNTY

DOCKET NO. IP6701/WS-08-1233, CN-09-1186, E002/M-09-1349 and M-09-1350

Dear Dr. Haar:

New Era provides these reply comments to the Commission's March 20, 2013 Order.

### **Avian and Bat Protection Plan**

The draft ABPP, as submitted by New Era to the Commission in November 2012 reflects three years of work and collaboration with residents, project participants and agencies. New Era made a significant effort to address the deficiencies noted by the Commission in its previous draft. New Era believes that this project site has been more thoroughly studied, surveyed and reported on than any other wind project site in the State of Minnesota.

We take great pride in our re-drafted ABPP, as it reflects our considerable collaboration with the Minnesota DNR, the U. S. Fish and Wildlife Service, and EFP Staff. The final comments made by the USFWS and MDNR were all items that can be incorporated in an update to the existing ABPP, which is intended to be a living document that continues to reflect changes in habitat, experience with project operations, advanced conservation practices and risk mitigation measures.

We note that since the date of our previous hearing on the ABPP, the Commission approved an ABPP very similar to ours, for another large wind project sited in proximity to habitat very similar to the New Era project.

New Era expects that the habitat will continue to evolve in the project area. Wildlife and habitat changes will continue to occur throughout the project area. This is also true for other wind project sites throughout Minnesota, and is not unique to this project site.

Our ABPP has drawn significant public comment, as did the previous draft ABPP, which was reviewed by the Commission in February 2012. In that previous hearing, project opponents submitted pictures and locations for a number of additional nests that they claimed had been ignored or overlooked by New Era's environmental consultant. In response to those claims, on March 27, 2012 field biologists from the DNR, USFWS and EFP Staff conducted an independent investigation of each and every one of those nests and locations, and found no new eagle nests nor any other items that the agencies believed warranted inclusion in the ABPP.

The current round of comments and recent complaints make similar claims to those of a year ago. Some of the new observations may even be true, but the ABPP as presently drafted is more than comprehensive and detailed enough to handle any new changes in wildlife or habitat. For many complainants, there will never be enough data, nor any acceptable answer to their complaints. New Era is frustrated with the complaint process as well. These complaints are not designed to improve the project, they are simply designed to badger New Era and its consultants. This project already has greater setbacks, more agency involvement and a more highly micro-sited layout than any other wind project in Minnesota.

New Era believes that the revised ABPP as would be amended for final agency comments, more than meets the requirements set forth for this ABPP in the Commission's August 23, 2011 Order approving the project's Site Permit, and is more than sufficiently detailed and comprehensive to allow for Commission approval.

This project already has a more well-developed record than any other wind project in the State of Minnesota, and New Era fails to see how more evidence would help.

### **Certificate of Need Extension**

The development process for this project has been far lengthier and more expensive than for most wind projects. The approval of the power contracts and the approval of the Site Permit both required the development of a significant record. The Commission required the project to undergo a lengthy and comprehensive process in front of an Administrative Law Judge, who after collecting significant testimony and evidence issued a comprehensive set of findings supporting the development of the project and rejecting project opponents' objections regarding setbacks, sound pressure levels, stray voltage and a wide variety of unsupported claims.

During the course of this lengthy due process, the project declared two separate force majeure events under its power contracts, totaling more than 1 ½ years due to delays in obtaining project approvals. The Certificate of Need extension became necessary as a result of these delays and force majeure events, which also extended the milestone dates in the power contracts, including the commercial operations date.

New Era notes that since the date of our previous hearing, the Commission has approved a Certificate of Need extension for another wind project similar to this one. We also note that in the meantime, NSP has also issued an RFP for additional wind energy and has collected bids in response to that RFP.

New Era agrees with EFP Staff that the Certificate of Need extension is unrelated to the ABPP and should be granted based on the demonstrated need for additional wind energy in the State. New Era fails to see how new evidence would help.

### **C-BED Status**

Following the change in upstream ownership of the project in October 2012, New Era formalized an Advisory Board composed of eight farm families actively farming in the project footprint. These families own and farm approximately 5,000 acres, which represents approximately one-third of the project footprint. These families are respected in the Goodhue community, and have been active in directing the project.

If the ABPP and Certificate of Need extension are approved and the project proceeds, these Advisory Board members will become significant co-owners of the project and will continue to direct and manage the project. The members of the Advisory Board continue to support and embrace the project, and they are convinced that the project is compatible with the existing land uses in the project footprint.

New Era remains committed to seeking a final C-BED determination once its' financing is structured and prior to the start of construction, just as the C-BED regulations allow and consistent with the treatment of other C-BED projects.

### **Where Do We Go From Here**

New Era has now spent more than \$15 million over four years developing this project, and as noted, this project has a more extensive record than any other wind project in the State of Minnesota.

At this point, given the Commission's March 20, 2013 Order, New Era has no confidence that due process for this project will ever end, nor that an ABPP will ever be approved, however comprehensively and carefully drafted.

For that reason, and in an effort to reach a more practical solution that would benefit NSP and its ratepayers, fulfill the objectives of the power contracts approved by this Commission and allow New Era to recover at least a portion of its investment, New Era initiated discussions with NSP to assign its power contracts to a third-party wind project developer and site.

These discussions actually began in December 2012. In the course of those discussions, New Era made a series of proposals to NSP, backed by three different project owners, each of whom is large, well-funded and capable. Each developer has one or more projects that could receive an assignment of the Goodhue power contracts and be operational in 2013 or 2014. Each of these projects is sited in a community that is far more receptive to wind energy than is Goodhue.

All of these proposals would result in the cure of all of the defaults noticed by NSP under the power contracts. And even though the assignment provisions of the power contracts do not require any price adjustment, all of these proposals would have resulted in a new power purchase rate substantially below the rate in the current power contracts.

Nonetheless, for reasons not fully known to New Era, and after a delay of two and a half months from the date of its detailed proposals, NSP chose to reject all of these proposals, as set forth in their letter to New Era of April 12, 2013, a copy of which New Era expects NSP will file with the Commission or on about the date of these reply comments. New Era notes that while its proposals requesting an assignment of the power contracts were pending, NSP issued an RFP for additional wind energy and collected bids in response thereto, including bids from the three companies backing the New Era proposals.

New Era continues to believe that an assignment of the power contracts to a third-party site would be a reasonable compromise and solution to the difficult circumstances surrounding this project.

In its April 12, 2013 letter to New Era, NSP stated that New Era would have 30 days from that date to effect a cure of the power contract defaults.

New Era believes that such an assignment should be approved under the terms of Section 19 of its power contracts, and therefore, at least for the remainder of the 30-day period specified by NSP, New Era will continue to attempt to complete the assignment and the cure of any and all defaults under the power contracts.

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Therefore, during the remainder of this 30-day period and pending completion of an assignment under Section 19 of the power contracts, New Era respectfully requests that any further evidentiary procedures with respect to the ABPP approval, the Certificate of Need extension and the project's C-BED status be held in abeyance.

New Era will make every effort to complete an assignment of the power contracts with NSP and a third-party assignee as soon as possible, so that the Amended and Restated PPA may be filed with the Commission as soon as possible in keeping with the Commission's directed set forth in Section V of its March 20, 2013 Order.

Sincerely,

New Era Wind Farm, LLC

A handwritten signature in black ink, appearing to read "Peter Mastic", written over a white background.

Peter Mastic