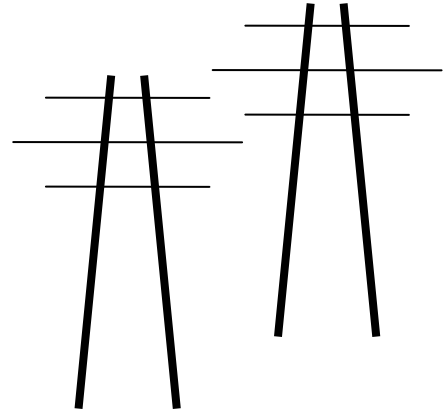


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December 8, 2014

Burl Haar, Executive Secretary
Minnesota Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

eFiled and eServed

RE: Motion for Reconsideration of Residents of Getty and Raymond Townships
In the Matter of the Application of Black Oak Wind, LLC for a Site Permit for a 42
Megawatt Large Wind Energy Conversion System in Stearns County, Minnesota
PUC Docket No. IP-6853/WS-10-1240
WS-11-831

Dear Dr. Haar:

Enclosed, eFiled and eServed please find Motion for Reconsideration for Residents of Getty and Raymond Townships, transcript of the October 30, 2014 Commission Meeting, and February 11, 2013 DNR Comments in the above-entitled matter.

Please let me know if you have any questions or require anything further.

Very truly yours,

Carol A. Overland
Attorney at Law

Cc: Residents of Getty and Raymond Townships

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of the Application of Black
Oak Wind, LLC for a Site Permit for a 42
Megawatt Large Wind Energy Conversion
System in Stearns County, Minnesota**

PUC Docket No. IP-6853/WS-10-1240

**In the Matter of the Application of Getty
Wind Company, LLC for a Site Permit for
a 40 Megawatt Large Wind Energy
Conversion System in Stearns County,
Minnesota**

PUC Docket No. IP-6866/WS-11-831

**RESIDENTS OF GETTY AND RAYMOND TOWNSHIPS
MOTION FOR RECONSIDERATION**

Residents of Getty and Raymond Townships, affected persons, bring this Motion for Reconsideration of the Commission's decision to amend the Siting Permit at the agenda meeting of October 30, 2014, reflected in the written Order of November 18, 2014, and request Rehearing, via a public hearing, regarding the many changed facts and issues of this project(s). Minn. R. 7829.3000; Minn. Stat. §216B.25; Minn. Stat. §216B.27. A transcript of that October 30, 2014 meeting is attached for ease of review.

In this case, the Commission's decision to amend the permit was not deliberated and was not well-considered. The decision is arbitrary and capricious because it improperly and restrictively framed the issues and entirely failed to consider important aspects of the permit

amendment, and this decision cannot be reasonably held to be a difference in view or the result of Commission expertise. See *White v. Minn. Dept. of Natural Resources*, 567 N.W. 2d 724 (Minn. Ct. App. 1997); see also *Pope County Mothers v. Minn. Pollution Control Agency*, 594 N.W. 2d 233, 236 (Minn. Ct. App. 1999) (citing *Trout Unlimited, Inc. V. Minn. Dept. of Agric.*, 528 N.W. 2d 903, 907 (Minn. Ct. App. 1995). This decision reflects the agency’s will and not its judgment. *Blue Cross & Blue Shield*, 624 N.W.2d 264, 278 (Minn. 2001).

Further, there is critical new evidence entered by Applicants that was left out of the discussion specifically regarding a change in ownership, identification and obfuscation of parties to the Power Purchase Agreement, and the impact of the Applicant’s new layout on natural resources and the environment. This permit amendment and the new information requires rehearing because the “weight and credit to be accorded conflicting evidence ... must be determined by a finder of fact.” See *Laska v. Anoka County*, 696 N.W. 2d 133, 140 (Minn. Ct. App. 2005). This new information should be incorporated into the record in a hearing. This new information would likely have an effect on the Commission’s decision. See *Blake v. Denelsbeck*, 170 N.W. 2d 337, 340 (Minn. 1969); *Turner v. Suggs*, 653 N.W. 2d 458, 467 (Minn. App. 2002); *Disch v. Helary*, 382 N.W. 2d 916, 918 (Minn. App. 1986).

Residents of Getty and Raymond Townships request that the Commission reconsider its decision to amend the Site Permit in light of four issues:

1. Chair Heydinger failed to disclose that she was the ALJ assigned to this docket until her appointment as Chair of the Commission, and did not recuse herself from discussion and decision, instead leading it and being the only Commission participant. Minn. R. 7845.0600.
2. Residents of Getty and Raymond Townships (“Residents”) were unreasonably restricted in scope of comments deemed acceptable to the Chair, and specifically were directed to limit comments to “size,” a Certificate of Need issue, and to not address layout, despite “layout” being named as part of the Agenda item, and an

integral part of the Applicant's request for Amendment, the Staff Briefing Papers, Commerce Comments, and the Commission's decision options.

3. New information relevant to the Commission's decision was filed by Applicants just prior to, and after the Commission's October 30 meeting, specifically, a request to extend the Certificate of Need in-service deadline, information revealing a change in ownership that also reveals change in C-BED status, and that the Power Purchase Agreement was in the name of Black Oak only.
4. Public participation should be encouraged, not quashed, and where issues are raised about layout and turbine siting in the siting permit amendment discussion, the public should not be improperly directed to a post-project construction permit complaint.

Residents of Getty and Raymond Townships also request that the Commission order rehearing due to the many changes in this project from those of the original permits.

I. CHAIR HEYDINGER'S DISQUALIFICATION - MINN. R. 7845.0600, SUBP. 1(B)

Minnesota Rules governing Commissioner responsibilities and disqualifying factors suggest that Chair Heydinger should have disclosed and recused herself from the October 30, 2014 Agenda Item regarding Getty and Black Oak wind projects due to her assignment as Administrative Law Judge for the Getty and Black Oak wind projects.

Minn. R. 7845.0600 DISQUALIFICATION.

Subpart 1. Disqualifying factors.

Commissioners and employees shall disqualify themselves if they:

- A. have a personal bias or prejudice concerning a party;
- B. before employment with the commission, served or participated as a lawyer or material witness in the pending proceeding; or**
- C. have an interest, other than that of the general public, that could be substantially affected by the outcome of the proceeding.

Subp. 2. Written disclosure; withdrawal.

The commissioner or employee shall disclose in writing within 48 hours to the commission the disqualifying interest and withdraw, taking no part in the pending proceeding.

Minn. R. 7845.0600, Subp. 1(B) DISQUALIFICATION. (emphasis added.)

Chair Heydinger was the assigned Administrative Law Judge for the Getty and Black Oak wind projects when she was an ALJ at Office of Administrative Hearings. Notices for the Public Hearing for these projects, naming ALJ Heydinger as the presiding judge were issued prior to her appointment:

- On March 11, 2011, the Commission determined the Application to be complete, and directed public participation for this project, which was to include a public hearing.¹
- Two months later, on May 11, 2012, the Commission filed a Notice of Public Hearing, over which then ALJ Heydinger was to preside.²
- On May 25, 2012, the Commission filed a Notice – Rescheduled Public Hearing, rescheduled for June 26, 2012, again specifying that ALJ Heydinger was to preside.³
- On June 6, 2012, Gov. Mark Dayton appointed Beverly Jones Heydinger as Chair of the Public Utilities Commission, to begin on July 2, 2012.⁴

Chair Heydinger did not disclose that she had been assigned to this case as an Administrative Law Judge, nor did she offer to recuse herself, nor in fact recuse herself.

¹ Order, March 11, 2011:

20113-60298-01	PUBLIC	10-1240	<input type="checkbox"/>	WS	PUC	ORDER	03/11/2011
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² Notice of Public Hearing, May 11, 2012:

20125-74638-01	PUBLIC	10-1240	<input type="checkbox"/>	WS	PUC	NOTICE--NOTICE OF PUBLIC HEARING	05/11/2012
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³ Notice – Rescheduled Public Hearing:

20125-75012-02	PUBLIC	10-1240	<input type="checkbox"/>	WS	PUC	NOTICE--RESCHEDULED PUBLIC HEARING	05/25/2012
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⁴ Announcement of Gov. Dayton’s appointment of Chair Heydinger online at: <http://mn.gov/governor/newsroom/pressreleasedetail.jsp?id=102-42232>

Even if Chair Heydinger had merely been assigned the case, and not done background work or presided over the hearing, this fact should have been disclosed to the Commission and the public.⁵ This is particularly important where it was only Chair Heydinger speaking to this matter at the October 30, 2014 meeting, and where as the Chair, Heydinger apparently determined that the Getty/Black Oak wind projects would not be removed from the agenda pending resolution of the Certificate of Need extension, as there was no public discussion:

CHAIR HEYDINGER: All right. I am aware that another request has been filed on this docket related to the certificate of need. That's not what we're going to address today, there will be opportunity for comment and response on that. So we will only address the matter as it has been noticed.

Commission Meeting, 10/30/2014, Transcript, p. 2, l. 22 – p. 3, l. 2. Chair Heydinger also unilaterally limited discussion of issues pertinent to the siting permit, as more fully stated below. No other Commissioner made any comments on the substantive issues in the permit amendment.

Residents of Getty and Raymond Townships request that the Commission reconsider and order a Rehearing on the matter of amending the site permit due to Chair Heydinger's failure to disclose her prior assignment to this docket and withdraw from this agenda item.

II. LAYOUT AND SITING WERE BEFORE COMMISSION AND AT ISSUE

Residents of Getty and Raymond Townships request that the Commission reconsider and order rehearing on this permit amendment due to prohibition of relevant issues regarding layout and failure to properly consider layout as a part of this amendment.

Chair Heydinger was the only Commissioner to speak on this agenda item at the October 30, 2014, Commission meeting. "Layout" of a wind project is a fundamental siting issue and

⁵ Having just been retained for this matter on October 22, 2014, counsel for Residents of Getty and Raymond Township did not have the opportunity to thoroughly review the record, including the Public Hearing notice, prior to the Commission meeting and discover this fact. However, it should not fall to parties to discover and disclose such information – it should be promptly disclosed by those involved.

decision. Despite an earlier statement that “we will only address the matter as it has been noticed,” Chair Heydinger disregarded the notice beginning with the initial introduction, repeatedly insisted that "size" as the only issue for discussion, and would not allow discussion of issues regarding “layout.” That restriction was not consistent with the agenda.

And, Ms. Overland, I understand you wanted to make some brief comments on the size of the turbines.

Commission Meeting, 10/30/2014, Transcript, p. 3, l. 3-5.

Comments about issues regarding project layout proceeded and were cut short:

MS. OVERLAND: ... But regarding the siting permit, first, these residents are not intervenors, but are participating to the best possible extent along the way and, you know, now are represented. And I realize that it is a late time in the process. They do have specific concerns about the siting and layout.

The project plans do disregard the farming operations, they interfere with drain tile, and they're without any plan to address or correct these problems.

They have had --

CHAIR HEYDINGER: Ms. Overland, I just wanted you to talk about the size of the turbines. That's all we're here to talk about today. That's the only change to the permit that's been requested.

MS. OVERLAND: It's my understanding the layout has also been requested to be changed. It's been changed many times throughout this. Is that incorrect?

CHAIR HEYDINGER: I don't know that the permit sets that forward.

Commission Meeting, 10/30/2014, Transcript, p. 4, l. 9 – p. 5, l. 5. This siting permit, as with all others, addresses project layout.

“Size,” on the other hand, is a Certificate of Need issue. Minn. R. 7849.0120, Subp. B(1). In this case, the layout is what was at issue, from the earliest Notice of Comment Period to the Commission’s Decision Alternatives and decision.

But comments specific to layout were again cut short:

CHAIR HEYDINGER: Ms. Overland, let me interrupt you. There's a process under the permit for complaints concerning its operation to be made. I don't think that's what we're here to do today.

MS. OVERLAND: It was my understanding that the Commission was here to address the new layout, and the new layout does not address these problems. Layout was an important issue, reflected in the many layout maps provided in the Application, subsequent iterations in several filings, the Commerce comments and draft Findings, in the multiple DNR Comments, and as specified in the Siting Permit.

CHAIR HEYDINGER: Okay. But that – we don't typically get into bird nest by bird nest in approving a layout. The question is whether it's within the permitted area. So I don't want to get in an argument with you, but I think you know there are other more appropriate avenues for addressing the questions that you have.

Commission Meeting, 10/30/2014, Transcript, p. 6, l. 10-25.

Residents of Getty and Raymond Townships were again prohibited from raising their concerns to the Commission:

MS. OVERLAND: That's correct, what I understand we're here to discuss is whether the new per -- the new layout should be approved, and this is regarding that new layout. Not whether the terms of the permit have been violated, because there is no project running, there are no turbines to violate any terms at this point.

CHAIR HEYDINGER: I don't want to argue with you. You know that there's a process. If you had specific arguments to be made they should have been made in writing so that the proponents – so that the company would have an opportunity to address them, so the staff would have an opportunity to investigate them. Just to come here today and say, well, there's an eagle's nest and they haven't done this and they haven't done that, it's not an effective way to advocate.

MS. OVERLAND: That's correct, I mean, I understand what you're saying, and I hear it. But they did make those arguments during that permitting process. Now, I've only just been recently retained, just over the last week.

CHAIR HEYDINGER: All right.

MS. OVERLAND: And I'm trying to raise these issues that they have raised in the process and feel were not addressed.

Id., p. 8, l. 1 (see also DNR Comments, below).

For this agenda item before the Commission, “layout” was the issue put out for public comment, and “layout” continued as the issue through the Commission decision on October 30, 2014 and the written Order issued November 18, 2014:

Topics Open for Comment:

- Should the Commission approve the petition for modification or amendment to the Black Oak Wind and Getty Wind large wind energy conversion system site permits to specify a different type of wind turbine model, a different total number of turbines, and a different preliminary turbine layout?
- If the modification or amendment is approved, should any conditions be required?

Notice of Comment Period – on Permit Modification, p. 1.⁶

The Notice of Commission Meeting was similarly specific about layout:

Should the Commission amend the Black Oak/Getty Site Permit to specify a different type of wind turbine model, a different total number of turbines, and a different preliminary turbine layout?

Notice of Commission Meeting, Agenda Item #1.⁷

Staff Briefing Papers also used the same language:

Should the Commission amend the Black Oak and Getty Site Permits to specify a different type of wind turbine model, a different total number of turbines, and a different preliminary turbine layout?

Staff Briefing Papers, p. 1 (see also p. 2, ⁸

The Applicant made the following points in support of its siting permit amendment request, focused on layout:

⁶ Notice of Comment Period – on Permit Modification:

20149-103401-02	PUBLIC	10-1240	<input type="checkbox"/>	WS	PUC	NOTICE OF COMMENT PERIOD--ON PERMIT MODIFICATION	09/29/2014
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⁷⁷ Notice of Commission Meeting, Agenda Item #1:

201410-103929-05	PUBLIC	10-1240	<input type="checkbox"/>	WS	PUC	NOTICE OF COMMISSION MEETING--OCTOBER 30, 2014	10/17/2014
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⁸ Staff Briefing Papers – filed October 22, 2014.

201410-104037-01	PUBLIC	10-1240	<input type="checkbox"/>	WS	PUC	BRIEFING PAPERS--OCTOBER 30, 2014 AGENDA	10/22/2014
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- The revised turbine layout is located entirely within the project boundaries previously studied for potential human and environmental impacts as part of the permitting process.
- The revised turbine layout will comply with all setback requirements and site layout restrictions identified in the site permits and will not result in any impacts not already considered by the Commission.
- It will not be necessary to submit revised preconstruction compliance filings beyond changes requested by Department of Commerce Energy Environmental Review and Analysis (EERA) as part of its review. Pre-construction surveys, reporting, and administrative compliance obligations set forth in the site permits have already been substantially completed using the Vestas V110 as a model.

Id., p. 4.

DNR Comments raised issues in many different comments in this record, regarding the Avian and Bat Protection Plan and several different layouts, and then regarding this specific layout and Staff noted three specific layout issues that the DNR requested be addressed, in fact, getting into “bird nest by bird nest in approving a layout” for specific turbines:

Based on its review, the DNR recommended three turbines that should be relocated if possible:

- Turbine No. 9 of the Black Oak Wind Farm is adjacent to a public water wetland.
- Turbine No. 40 of the Black Oak Wind Farm is located in a documented area of heavier flight path use and is near Hoboken Creek and a possible seasonal wetland.
- Turbine No. 37 of the Getty Wind Farm is in closer proximity to documented flight paths between a Waterfowl Production Area and a public water.

Id., p. 5 (See DNR Comments⁹, and DNR Comments regarding Avian and Bat Protection Plan, attached). DNR Comments on February 12, 2012 regarding the Acoustic Report for the Avian

⁹ DNR Comments filed in 10-1240:

201410-103717-02	PUBLIC	10-1240	<input type="checkbox"/>	WS	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	LETTER	10/09/2014
201410-103717-01	PUBLIC	10-1240	<input type="checkbox"/>	WS	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	LETTER	10/09/2014

and Bat Protection Plan showed that the monitoring was significantly flawed, and six months of night monitoring were lost due to non-operational monitors!

Equipment failure resulted in a total of 180 lost detector nights (page 6). The east tower was nonoperational 40% (80 detector nights) of the time due (page 7). It is difficult to interpret the implications of this equipment failure on describing peak activity or species composition without further details. Presumably, given the above numbers, equipment failure occurred at all of the towers? When did the failure(s) occur? Was it a one-time event or did the equipment fail periodically throughout the survey period? Along these lines, the percentages reported in Table 1 are misleading as the acoustic equipment at each of the towers was not collecting data for the same duration.

DNR Comment, 2/12/2013. There is no record of performing this monitoring and acoustic report after this 180 night equipment failure, and no report of correction of the underlying information and results. Staff does not address these long term problems raised by the DNR.

Staff comments also reflected the focus on layout, and the changes proposed:

Staff notes that the Permittee is not proposing any changes to the site permits beyond the number of turbines, the turbine type, and the final turbine layout. Although the proposed turbine layout has been revised, all the turbines are located within the permitted project boundaries and the project boundaries remains the same. The project's compatibility with the environmental and natural resource features was considered during the permitting process. The site permits include conditions to protect the environment, enhance sustainable development, and promote the efficient use of resources.

Id. p. 6.

201410-103717-03	PUBLIC	10-1240	<input type="checkbox"/>	WS	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	LETTER	10/09/2014
20149-103427-01	PUBLIC	10-1240	<input type="checkbox"/>	WS	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--FOR THE BLACK OAK WIND AND GETTY WIND SITE PERMIT	09/30/2014
20149-103427-03	PUBLIC	10-1240	<input type="checkbox"/>	WS	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--GY_PROJECT MAPS	09/30/2014
20149-103427-02	PUBLIC	10-1240	<input type="checkbox"/>	WS	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS--BO_PROJECT MAPS	09/30/2014
20132-83756-01	PUBLIC	10-1240	<input type="checkbox"/>	WS	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS	02/12/2013

Commerce EERA Comments focus on layout and also permit modifications regarding reporting of ownership changes, issues raised by Residents of Getty and Raymond Township previously and relevant to the Commission’s siting permit amendment decision.¹⁰

Commission Staff briefing papers also reflected the focus of project layout in its presentation of Commission Decision Alternatives, staff recommendation of and selection of Decision Option 2 by the Commission:

Grant the amendments as requested by Black Oak and Getty in its Petition incorporating EERA’s permit language modifications and revised maps provided in Attachments 1 and 2 of these briefing papers.

Id. p. 6.

The Commission’s Order issued November 18, 2014, also reflects “layout” as the primary issue:

The Commission hereby issues the attached Amended Site Permit for Black Oak Wind, LLC. The amended permit replaces the preliminary turbine layout in Attachments 1a, 1b, and 1c with the layout in Attachment 1 from the EERA’s September 30, 2014 comments, and makes the following additional changes:

Commission Order, November 18, 2014, p. 5.¹¹

Residents of Getty and Raymond Townships request that the Commission reconsider and order rehearing on this permit amendment due to prohibition of relevant issues regarding layout and failure to properly consider layout as a part of this amendment.

¹⁰ Commerce EERA Comments:

20149-103463-02	PUBLIC	10-1240	<input type="checkbox"/>	WS	DOC EERA	COMMENTS--ON BLACK OAK AND GETTY LWECs SITE PERMIT MODIFICATIONS	09/30/2014
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¹¹ Order, November 18, 2014.

201411-104720-01	PUBLIC	10-1240	<input type="checkbox"/>	WS	PUC	ORDER--ORDER AMENDING SITE PERMIT	11/18/2014
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III. APPLICANT’S NEW INFORMATION COULD HAVE RESULTED IN DIFFERENT DECISION BY COMMISSION

Reconsideration is appropriate where new information is discovered that, if known to the Commission, could have resulted in a different decision. Residents of Getty and Raymond Townships request reconsideration and rehearing because new information relevant to the Siting Permit amendment decision was disclosed by Applicant just prior to the Commission’s decision, and other information just afterwards, information Commission should have known and which should have been before the Commission prior to making its decision. Residents of Getty and Raymond Townships request reconsideration and rehearing because new information is also available by using the new layout maps and extrapolating the turbine distances from the known eagle nest – and the eagle nest not shown on Applicant’s maps should be added.

The first piece of new information came just two days prior to the Commission’s October 30, 2014 meeting, the Applicants filed for a Certificate of Need extension, requesting a full year beyond the December 31, 2014 planned in-service date.¹² A siting permit should not be amended prior to resolution of this Certificate of Need uncertainty, or in light of the certainty that the project will not meet its certified in-service date.

Another piece of new information is regarding ownership of the project, a material issue. On November 14, in a letter dated November 11, 2014, less than two weeks after the Commission’s meeting, and four days prior to the Commissions written Order was released, Applicant announced a change in ownership.¹³ This letter stated:

¹² Certificate of Need docket filing:

201410-104198-01	PUBLIC	11-471	<input type="checkbox"/>	CN	BLACK OAK WIND, LLC AND GETTY WIND COMPANY, LLC	OTHER--PETITION TO EXTEND CERTIFICATE OF NEED	10/28/2014
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¹³ Notification of Acquisition:

Getty Wind Company, LLC provides this notice to the Minnesota Public Utilities Commission (“Commission”) that it has closed an acquisition concerning Getty Wind Company, LLC. Effective November 11, 2014, Black Oak Wind, LLC, a wholly-owned subsidiary of Geronimo Wind Energy, LLC d/b/a Geronimo Energy, LLC (“Geronimo”), has replaced Getty Wind, LLC as the owner of Getty Wind Company, LLC.

A change in ownership was regarded as sufficiently significant that before the change was made public, Commerce DER requested that the language below be added to the permit:

11.5 TRANSFER OF PERMIT

The Permittee may not transfer this Permit without the approval of the Commission. If the Permittee desires to transfer this Permit, the holder shall advise the Commission in writing of such desire. The Permittee shall provide the Commission with such information about the transfer as the Commission requires to reach a decision. The Commission may impose additional conditions on any new Permittee as part of the approval of the transfer.

Within 20 days after the date of the notice provided in Section 8.4, the Permittee shall file a notice describing its ownership structure, identifying, as applicable:

- (a) the owner(s) of the financial and governance interests of the Permittee;
- (b) the owner(s) of the majority financial and governance interests of the Permittee’s owners;
- and
- (c) the Permittee’s ultimate parent entity (meaning the entity which is not controlled by any other entity).

The Permittee shall notify the Commission of:

- (a) A change in owner(s) of the majority* financial or governance interests in the Permittee;
- (b) A change in owner(s) of the majority* interest financial or governance interests of the Permittee’s owners, or,
- (c) A sale which changes the parent entity of the Permittee.

* When there are only co-equal 50/50 percent interests, any change shall be considered a change in majority interest.

The Permittee shall notify the Commission of:

- (a) The sale of a parent entity or a majority interest in the Permittee,
- (b) The sale of a majority interest of the Permittee’s owners or majority interest of the owners,
- or,
- (c) A sale which changes the entity with ultimate control over the Permittee.

201411-104675-02	PUBLIC	10-1240	<input type="checkbox"/>	WS	GETTY WIND COMPANY, LLC	LETTER--NOTIFICATION OF ACQUISITION AFFECTING OWNERSHIP OF GETTY WIND COMPANY LLC	11/14/2014
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This type of change does not occur overnight, does not occur lightly, and was contemplated by Applicants and also the Dept. of Commerce in its comments to the permit amendment, and in its insertion of the requirement of notification of such a change in the permit. Uncertainty of ownership was also one of the issues raised by commentors in the dockets, yet dismissed by regulators. That this was not disclosed at the Commission meeting, or before, is problematic. How does this change of ownership affect the presumed and relied upon C-BED status of the Getty portion of this project?

Another relevant fact revealed by the Applicant(s), is found in a Compliance Filing letter filed and “REVISED November 20, 2014.”¹⁴ Applicant(s) state that the Power Purchase Agreement is in the name of Black Oak only, and not Getty, but yet includes the Getty project footprint and the Getty megawatts!

The PPA, dated September 30, 2013, between Black Oak and the Minnesota Municipal Power Agency (“MMPA”), provides for the purchase of all electric energy from a 78 MW facility for the PPA’s 20-year term. The PPA names only Black Oak as the seller, but includes the project boundary for Getty in addition to Black Oak in the facility’s description. Getty, however, is not explicitly named in the PPA. Black Oak and MMPA have since executed an amendment to the PPA, effective September 30, 2014, pursuant to which the parties to the PPA acknowledge and agree that the facility subject to the PPA is comprised of both the Black Oak Wind Project, owned by Black Oak Wind, LLC, and the Getty Wind Project, owned by Getty Wind Company, LLC.

Under what authority can Black Oak sign a Power Purchase Agreement for the Getty wind project that it does not own? Why was this information withheld for over a year? How can a project rely on a Power Purchase Agreement when it doesn’t own ½ of the project necessary for the PPA?

¹⁴ November 20, 2014 PPA filing:

201411-104797-01	PUBLIC	10-1240	<input type="checkbox"/>	WS	BLACK OAK WIND, LLC AND GETTY WIND COMPANY, LLC	COMPLIANCE FILING--REVISED SECTION 10.2 PPA NOTICE	11/20/2014
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Let's take a look at the prior August 26, 2014 Section 10.2 Compliance Filing regarding the Power Purchase Agreement.¹⁵ This letter also refers back to a Power Purchase Agreement dated September 30, 2013, nearly one year before the August 26, 2014 filing. Black Oak is the only wind farm listed, yet the map on A-2 of that August 26, 2014 filing shows both projects, and states:

At the time the Site Permits were issued, Black Oak Wind, LLC and Getty Wind Company, LLC did not have a Power Purchase Agreement or other enforceable mechanism for the sale of electricity to be generated by the Projects. Thus, in accordance with Section 10.2 of the Site Permits, Black Oak Wind, LLC and Getty Wind Company, LLC have prepared documentation evidencing the Power Purchase Agreement, dated September 10, 2013. The Power Purchase Agreement contemplates the sale of energy from a "Facility" with approximately 78 megawatts (MW) in nameplate capacity. While the Black Oak Wind Farm is only planned to be up to 42 MW in nameplate capacity, Black Oak Wind, LLC's parent company, Geronimo Wind Energy, LLC d/b/a Geronimo Energy, LLC ("Geronimo"), has an option to purchase Getty Wind Company, LLC, which is developing the Getty Wind Farm. The Getty Wind Farm is proposed as an up to 40 MW nameplate capacity facility. Upon execution of Geronimo's option to purchase, the Getty Wind Farm will be included as the remainder of the "Facility" under the Power Purchase Agreement. The partially redacted Power Purchase Agreement is attached.

Id., Compliance Filing, Section 10.2, August 26, 2014, p. 1-2 of 100. This Compliance Filing constitutes very late and incomplete disclosure. The purpose of Compliance Filings is to update the Commission on significant changes, yet in the Section 10.2 Compliance filings, the Applicant(s) to fail to disclose something as significant as a Power Purchase Agreement in September, 2013, and then when disclosing it a year after the fact, to reveal this type of agreement, and that the Applicant signed a Power Purchase Agreement for power of a project which the Applicant did not fully own.

¹⁵ August 26, 2014 PPA filing:

20148-102521-04	PUBLIC	10-1240	<input type="checkbox"/>	WS	BLACK OAK WIND, LLC AND GETTY WIND COMPANY, LLC	COMPLIANCE FILING--SECTION 10.2 - PPA NOTICE	08/26/2014
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Further, new information not considered by the Commission is also extrapolated from the Applicant's new layout maps. Using the Black Oak map showing the eagle nest, and drawing a two mile radius around the nest,¹⁶ there are at least 18 turbines within that two miles, and one additional affected turbine with rotor diameter in that 2 mile radius! Although there are comments in the Application, Avian and Bat Protection Plan, and other documents reflecting "consultation" with US Fish and Wildlife, there are no Comments from USFWS in the record and no notation of whether this project will require an eagle take permit, which is likely.



For turbine layout, section by section, see Amended Site Permit, p. 9 and 12 of pdf.¹⁷

¹⁶ Drawing by David Wiener, prior commentator in dockets.

¹⁷ Amended Site Permit:

An off the cuff review of the map shows the following affected turbines in Getty:

- Section 7: Turbines 14 & 38;
- Section 8: Turbine 35;
- Section 16: Turbine 18, and Turbine 36 RD area affected;
- Section 1: Turbines 19, 20 and 21.

A similar review of the affected turbines in Black Oak:

- Section 1: Turbine 40;
- Section 11: Turbine 17;
- Section 12: Turbines 12, 13, 14 and 16;
- Section 13: Turbine 11;
- Section 14: Turbines 28, 9, 10;
- Section 23: Turbine 29.

This eagle nest and turbine layout information should be considered by the Commission – in a siting permit, because turbines are indeed sited “bird nest by bird nest” where eagles are involved and turbine placement is at issue. Residents of Getty and Raymond Townships have requested comments, inventory, and other information in relation to the Black Oak and Getty wind projects from USFWS, and that FOIA is pending.

Residents of Getty and Raymond Townships request reconsideration and rehearing because new information relevant to the Siting Permit amendment decision was disclosed by Applicant just prior to the Commission’s decision, and other information just afterwards, including information provided under the Commission’s order for Compliance Filings. The information regarding the PPA was provided nearly one year after the fact, and then corrected just after the permit was amended to reflect that the Getty Project is included in that PPA. This is information, which Application failed to fully disclose, is information that the Commission should have known, which should have been considered by the Commission prior to making its decision, and which could have resulted in a different decision.

201411-104720-01	PUBLIC	10-1240	<input type="checkbox"/>	WS	PUC	ORDER--ORDER AMENDING SITE PERMIT	11/18/2014
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IV. PUBLIC PARTICIPATION IS TO BE ENCOURAGED, NOT QUASHED

Residents of Getty and Raymond Townships request reconsideration and rehearing because public participation is to be encouraged, not quashed or misdirected as it was in this docket decision. Despite this being a wind project sited under 216F, rather than under the Power Plant Siting Act, the statutory directives regarding the importance of public participation in siting utility infrastructure should nonetheless apply:

The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section 216E.16.

Minn. Stat. §216E.08, Subd. 2.

The administrative process is a struggle for regular people, and the Commission should do whatever possible to support participation. Where issues are appropriately raised about layout and turbine siting, issues addressed in site permitting, the public should not be improperly directed to a post-project construction permit complaint.

Chair Heydinger repeatedly stated that layout, the issues presented by Residents of Getty and Raymond Township and commenters in response to the Notice, were not at issue were not to be raised at this time, and should be dealt with in the Permit Complaint Process. These statements seemed to assert that the siting permit formal complaint process was the appropriate process and venue for public comment and participation at this permit amendment stage.

Commission Meeting, 10/30/2014, Transcript, p. 6-8.

Chair Heydinger also stated that as the Commission, “we don’t have any formal allegations here, what terms of the permit have been violated.” *Id.*, p. 8, l. 10-12. Specifically:

MS. OVERLAND: That's correct, what I understand we're here to discuss is whether the new per -- the new layout should be approved, and this is regarding that new layout. Not

whether the terms of the permit have been violated, because there is no project running, there are no turbines to violate any terms at this point.

CHAIR HEYDINGER: I don't want to argue with you. You know that there's a process. If you had specific arguments to be made they should have been made in writing so that the proponents – so that the company would have an opportunity to address them, so the staff would have an opportunity to investigate them. Just to come here today and say, well, there's an eagle's nest and they haven't done this and they haven't done that, it's not an effective way to advocate.

MS. OVERLAND: That's correct, I mean, I understand what you're saying, and I hear it. But they did make those arguments during that permitting process. Now, I've only just been recently retained, just over the last week.

CHAIR HEYDINGER: All right.

MS. OVERLAND: And I'm trying to raise these issues that they have raised in the process and feel were not addressed.

CHAIR HEYDINGER: All right. Well, I think you know there is a process under the permit --

MS. OVERLAND: Yes.

CHAIR HEYDINGER: -- for raising complaints. And if your clients choose to do that, they certainly can, and then we'll deal with it in due course.

MS. OVERLAND: Okay. And I would like to note for the record, though, that the permit – the permit process that is within the permit, that is for after they're constructed and not before.

CHAIR HEYDINGER: I understand.

Commission Meeting, October 30, 2014, Transcript, P. 8, l. 12- p. 10, l. 1.

The only “formal complaint process,” such as that referred to by Chair Heydinger, is for making complaints regarding construction issues and/or operational complaints about the project and permit compliance after the project is up and running. See Commission Order, November 18, 2014, Attachment 2, p. 26 (Complaint and Handling Procedures for Large Wind Energy Conversion Systems). Regarding siting and layout issues, Chair Heydinger stated that “I don't know that the permit sets that forward.” That is most unfortunate – a wind siting permit does

exactly that. A Permit Complaint not the appropriate way to address relevant and legitimate issues prior to the projects' construction, such as the pre-construction permitting siting and layout issues raised by Residents of Getty and Raymond Township.

For example, the definition of "Complaint" from the siting permit complaint process attached to the Permit and Order:

Complaint: A verbal or written statement presented to the permittee by a person expressing dissatisfaction or concern regarding site preparation, cleanup or restoration or other Large Wind Energy Conversion System (LWECS) and associated facilities permit conditions. Complaints do not include requests, inquiries, questions, or general comments.

Commission Order, November 18, 2014, Permit, Attachment 2, p. 1. This Complaint process is expressly applicable to the periods of construction and after turbines are operational:

F. Reporting Requirements

The permittee shall commence complaint reporting at the beginning of project construction and continue through the term of the permit. The permittee shall report all complaints to the Commission according to the following schedule:

Permit, Attachment 2, p. 2.

Once a wind project is constructed, the layout will not change – not once has the Commission ever ordered that a turbine be moved, no matter how problematic the issues complained of, no matter the substantive significance of a permit violation claimed. Once the project is operational, it's too late. The Permit Complaint procedure is not at all an appropriate process at this point in time, prior to construction and operation, for any issue raised regarding layout and impacts.

Residents of Getty and Raymond Townships request reconsideration and rehearing because public participation is to be encouraged, not quashed or misdirected as it was in this docket decision.

V. RESIDENTS REQUEST RECONSIDERATION AND REHEARING

Residents of Getty and Raymond Townships, as provided by Minn. R. 7829.3000 and Minn. Stat. §216B.25 and Minn. Stat. §216B.27, request that the Commission reconsider and order a Rehearing on the matter of amending the site permit due to the many changed facts and issues of this project(s) and the specific substantive problems with the Commission's process and decision:

- Chair Heydinger's failure to disclose her prior assignment as Administrative Law Judge to this docket and withdraw from discussion and decision of this agenda item.
- Prohibition of comment on relevant issues regarding layout and failure of the Commission to properly consider issues of layout and impact as a part of this amendment.
- New information relevant to the Siting Permit amendment decision disclosed by Applicant just prior to the Commission's decision, and other information just afterwards, information Commission should have known, which should have been considered by the Commission prior to making its decision, and which could have resulted in a different decision.
- Public participation is to be encouraged, not quashed or misdirected as it was in this docket decision.

Residents of Getty and Raymond Townships appreciate the consideration of these issues by the Commission.

Respectfully submitted,

December 8, 2014



Carol A. Overland #254617
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Residents of Getty and Raymond Townships
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1 STAFF BRIEFING - ORAL ARGUMENTS - DELIBERATIONS
2 BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

3 Beverly Jones Heydinger, Chair
4 Nancy Lange, Commissioner
5 Dan Lipschultz, Commissioner
6 Betsy Wergin, Commissioner

7
8 In the Matter of the Application of Black Oak Wind, LLC
9 for a Site Permit for a 42 Megawatt Large Wind Energy
10 Conversion System in Stearns County, Minnesota;

11 In the Matter of the Application of Getty Wind Company,
12 LLC for a Site Permit for a 40 Megawatt Large Wind Energy
13 Conversion System in Stearns County, Minnesota.

14 IP6853/WS-10-1240; Black Oak Wind, LLC;
15 IP6866/WS-11-831 Getty Wind Company, LLC

16 Minnesota Public Utilities Commission
17 350 Metro Square Building
18 121 Seventh Place East
19 St. Paul, Minnesota

20 October 30, 2014

21
22
23
24
25 TRANSCRIPT PREPARED BY: Janet Shaddix Elling, RPR

1 CHAIR HEYDINGER: Good morning everyone.
2 My name is Beverly Jones Heydinger and we're here
3 for a meeting of the Minnesota Public Utilities
4 Commission on October 30th, 2014. With me today are
5 Commissioners Wergin, Lange, and Lipschultz.

6 We have a fairly long agenda so we'll try
7 to move along productively.

8 Mr. Eknes, agenda item number one.

9 MR. EKNES: Thank you, Madam Chair, and
10 good morning, Commissioners.

11 Item number one involves two site
12 permits. The first one is docket 10-1240, involving
13 Black Oak Wind, LLC; the second is 11-831 and
14 involving Getty Wind Company, LLC.

15 And the question for the Commission is
16 should the Commission amend these permits to specify
17 a different wind turbine model.

18 CHAIR HEYDINGER: Thank you.

19 Mr. Ek, did you have anything you wanted
20 to add on this agenda item?

21 MR. EKNES: No, I don't, Commissioner.

22 CHAIR HEYDINGER: All right. I am aware
23 that another request has been filed on this docket
24 related to the certificate of need. That's not what
25 we're going to address today, there will be

1 opportunity for comment and response on that. So we
2 will only address the matter as it has been noticed.

3 And, Ms. Overland, I understand you
4 wanted to make some brief comments on the size of
5 the turbines.

6 MS. OVERLAND: Thank you, Madam Chair,
7 Members of the Commission.

8 I'm Carol Overland, here today
9 representing the residents of Raymond and Getty
10 Townships. Behind me are Barb Jennissen and her
11 son, Aaron Jennissen, Carolyn Reitsma, and Florence
12 Gretsches.

13 First --

14 CHAIR HEYDINGER: Can you just be clear
15 about this? Are you representing all the residents
16 or some selected group of residents?

17 MS. OVERLAND: No, a select association
18 of residents. Certainly not all of the residents,
19 no.

20 CHAIR HEYDINGER: Okay.

21 MS. OVERLAND: A group of residents from
22 that area.

23 CHAIR HEYDINGER: Okay. Thank you.

24 MS. OVERLAND: Yeah, who have adopted
25 that moniker.

1 We noticed that the certificate of need
2 request was filed on Tuesday, and with the
3 certificate of need in limbo, first, I want to note
4 that I think it's -- shouldn't -- the siting issue
5 shouldn't be addressed while the certificate of need
6 is in limbo at this time. So we would ask that it
7 be postponed until after the certificate of need
8 issues have been addressed.

9 But regarding the siting permit, first,
10 these residents are not intervenors, but are
11 participating to the best possible extent along the
12 way and, you know, now are represented. And I
13 realize that it is a late time in the process. They
14 do have specific concerns about the siting and
15 layout.

16 The project plans do disregard the
17 farming operations, they interfere with drain tile,
18 and they're without any plan to address or correct
19 these problems.

20 They have had --

21 CHAIR HEYDINGER: Ms. Overland, I just
22 wanted you to talk about the size of the turbines.
23 That's all we're here to talk about today. That's
24 the only change to the permit that's been requested.

25 MS. OVERLAND: It's my understanding the

1 layout has also been requested to be changed. It's
2 been changed many times throughout this. Is that
3 incorrect?

4 CHAIR HEYDINGER: I don't know that the
5 permit sets that forward.

6 MS. OVERLAND: The notice -- as I
7 understand it, the notice said layout as well.

8 CHAIR HEYDINGER: A different preliminary
9 turbine layout, you're correct.

10 MS. OVERLAND: Yes, and this has been a
11 problem throughout this process, in that the layout
12 keeps changing. There have been many, many maps
13 introduced, and it doesn't -- the layout here is an
14 issue. There have also been many -- a large
15 percentage for this land is under absentee
16 ownership.

17 The DNR has raised concerns on this and
18 we can't tell from the maps and the layout whether
19 or not the DNR's concerns have been addressed.
20 There is an eagle site right below -- the sites, two
21 sites come together and there's a little spot near
22 the bottom and there's an eagle nest that has not
23 apparently been addressed. There's one that has not
24 even been reported in the documents that is just
25 slightly to the north and east of the eagle nest

1 that is there.

2 On the Jennissens' property, U.S. Fish
3 and Wildlife came in and did extensive work just
4 north of the Padua Wildlife Management Area, and dug
5 many ponds, and that has not been shown or reflected
6 in any of the information provided.

7 The eagle nest is shown in a bird flight
8 path study that was done by HDR, but U.S. Fish and
9 Wildlife area north of that has not been addressed.

10 CHAIR HEYDINGER: Ms. Overland, let me
11 interrupt you.

12 There's a process under the permit for
13 complaints concerning its operation to be made. I
14 don't think that's what we're here to do today.

15 MS. OVERLAND: It was my understanding
16 that the Commission was here to address the new
17 layout, and the new layout does not address these
18 problems.

19 CHAIR HEYDINGER: Okay. But that -- we
20 don't typically get into bird nest by bird nest in
21 approving a layout. The question is whether it's
22 within the permitted area. So I don't want to get
23 in an argument with you, but I think you know there
24 are other more appropriate avenues for addressing
25 the questions that you have.

1 MS. OVERLAND: Do you believe public
2 health concerns are something that should be
3 considered within approving the layout?

4 CHAIR HEYDINGER: They were addressed at
5 the time the permit was approved.

6 MS. OVERLAND: And with this layout that
7 will change the relationship of the turbines to
8 people's homes.

9 CHAIR HEYDINGER: But if they are still
10 sited in a way that is consistent with the permit,
11 then they are fine. And if they are not, then
12 there's a complaint process that can be lodged. I
13 mean, we don't get into addressing those kinds of
14 disputes until they've been raised through the
15 permit process.

16 MS. OVERLAND: Oh, and they have been
17 participating to the extent possible --

18 CHAIR HEYDINGER: But there's been no
19 petition filed --

20 MS. OVERLAND: Right.

21 CHAIR HEYDINGER: -- alleging specific
22 violations. You haven't, as I understand, followed
23 the permit process, so those questions are premature
24 for us.

25 MS. OVERLAND: Well, it's also -- they're

1 premature to file a complaint at this time because
2 there are no turbines up and running.

3 CHAIR HEYDINGER: That's not the
4 question, I don't think. You said you had concerns
5 that the terms of the permit were being filed in the
6 siting.

7 So, and in any event, do you have any
8 additional comments to be made? Or I'm just not
9 sure, given that we don't have any formal
10 allegations here, what terms of the permit have been
11 violated.

12 MS. OVERLAND: That's correct, what I
13 understand we're here to discuss is whether the new
14 per -- the new layout should be approved, and this
15 is regarding that new layout. Not whether the terms
16 of the permit have been violated, because there is
17 no project running, there are no turbines to violate
18 any terms at this point.

19 CHAIR HEYDINGER: I don't want to argue
20 with you. You know that there's a process. If you
21 had specific arguments to be made they should have
22 been made in writing so that the proponents -- so
23 that the company would have an opportunity to
24 address them, so the staff would have an opportunity
25 to investigate them. Just to come here today and

1 say, well, there's an eagle's nest and they haven't
2 done this and they haven't done that, it's not an
3 effective way to advocate.

4 MS. OVERLAND: That's correct, I mean, I
5 understand what you're saying, and I hear it. But
6 they did make those arguments during that permitting
7 process.

8 Now, I've only just been recently
9 retained, just over the last week.

10 CHAIR HEYDINGER: All right.

11 MS. OVERLAND: And I'm trying to raise
12 these issues that they have raised in the process
13 and feel were not addressed.

14 CHAIR HEYDINGER: All right. Well, I
15 think you know there is a process under the
16 permit --

17 MS. OVERLAND: Yes.

18 CHAIR HEYDINGER: -- for raising
19 complaints. And if your clients choose to do that,
20 they certainly can, and then we'll deal with it in
21 due course.

22 MS. OVERLAND: Okay. And I would like to
23 note for the record, though, that the permit -- the
24 permit process that is within the permit, that is
25 for after they're constructed and not before.

1 CHAIR HEYDINGER: I understand.

2 MS. OVERLAND: Yeah. Thank you.

3 CHAIR HEYDINGER: All right. And did the
4 company care to respond?

5 Are there further questions for
6 Ms. Overland or for the staff or for the company?

7 All right. Is there a motion?

8 Commissioner Wergin.

9 COMMISSIONER WERGIN: Madam Chair, seeing
10 no one else come forward and having that explanation
11 been made, I will move number 2 from our briefing
12 papers on page 6, which is to grant the amendments
13 as requested, incorporating the EERA's permit
14 language modifications and revised maps provided in
15 the attachments.

16 CHAIR HEYDINGER: All right. Is there
17 further discussion?

18 All those in favor, signify by saying
19 aye.

20 ALL COMMISSIONERS: Aye.

21 CHAIR HEYDINGER: Opposed, same sign.

22 Motion carries unanimously.

23 (Matter concluded.)

24

25

1 STATE OF MINNESOTA)
2) ss.
3 COUNTY OF HENNEPIN)

4
5 REPORTER'S CERTIFICATE

6
7
8 I, Janet Shaddix Elling, do hereby
9 certify that the above and foregoing transcript of the
10 digitally-recorded proceeding, consisting of the
11 preceding 10 pages, is a full, true and complete
12 transcript of the digitally-recorded proceedings to the
13 best of my ability.

14 Dated November 24, 2014.

15
16
17
18 _____
19 JANET SHADDIX ELLING
20 Registered Professional Reporter
21
22
23
24
25



Minnesota Department of Natural Resources

Division of Ecological and Water Resources, Box 25

500 Lafayette Road

St. Paul, Minnesota 55155-4025

Phone: (651) 259-5109 E-mail: lisa.joyal@state.mn.us

February 11, 2013

Correspondence # ERDB 20100605-0009

Suzanne Steinhauer, State Permit Manager
Energy Facility Permitting
Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Re: Black Oak / Getty Wind Acoustic Report

Dear Ms. Steinhauer,

The Minnesota Department of Natural Resources (DNR) has reviewed the *Acoustic Bat Studies for the Black Oak and Getty Wind Resource Area – Final Report* submitted by Black Oak Wind, LLC and Getty Wind, LLC in compliance with their Public Utilities Commission (PUC) Site Permits. If possible, the DNR would also like to receive the raw data collected during any acoustic surveys that are required by the PUC. The following comments on the report are provided for clarification purposes.

Introduction

The Introduction states that all seven bat species in Minnesota are migratory. The four cave bats are not considered migratory as they hibernate in caves, mines, or buildings. Only the silver-haired bat (*Lasionycteris noctivagans*), hoary bat (*Lasiurus cinereus*), and red bat (*Lasiurus borealis*) migrate south for the winter.

Results

Only 0.8% of the acoustic detections were identifiable bat calls. This seems to be a low percentage. Is it possible that the detectors/microphones were not properly deployed and thus recorded more wind and noise? Checking the detectors more than once/month would decrease the amount of data lost to noise and/or equipment failure (see below).

The report (page 6) states that they acoustically detected evening bats (*Nycticeius humeralis*). This species is not known to occur in Minnesota. It does, however, have a call structure similar to the big brown bat (*Eptesicus fuscus*), a species that does occur in Minnesota.

Equipment failure resulted in a total of 180 lost detector nights (page 6). The east tower was nonoperational 40% (80 detector nights) of the time due (page 7). It is difficult to interpret the implications of this equipment failure on describing peak activity or species composition without further details. Presumably, given the above numbers, equipment failure occurred at all of the towers? When did the failure(s) occur? Was it a one-time event or did the equipment fail periodically throughout the survey period? Along these lines, the percentages reported in Table 1 are misleading as the acoustic equipment at each of the towers was not collecting data for the same duration.

It would be useful if Table 1 also reported the number of unidentified bat calls that were detected. Excluding unidentified bat calls from the species composition results implicitly assumes that the unidentified calls are proportionally distributed among species / species groups, and this may not be a valid assumption.

Discussion

The report (page 9) states that “The overwhelming majority of the calls recorded were from the big brown / silver-haired bat group and the peak activity levels were much higher in July than those recorded throughout the year, likely indicating that one or both of these species was migrating through the area at the time.” Big brown bats are much more numerous in Minnesota so it is likely that majority of these bat calls were from big brown bats, which are not migratory. Also, rather than being due to migration, the peak activity in July is likely due to increased feeding activity that corresponds to mothers having pups and/or the pups becoming volant. Minnesota’s tree bats migrate later in the season (typically September).

The DNR appreciates the opportunity to review the acoustic report. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Joyal".

Lisa Joyal
Endangered Species Review Coordinator

cc: Jamie Schrenzel, DNR
Melissa Doperalski, DNR