

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the 2015 Annual Hearing
on the Power Plant Siting and
Transmission Line Routing Program

REPORT TO THE COMMISSION

On November 10, 2015, the Minnesota Public Utilities Commission (Commission or PUC) requested that the Office of Administrative Hearings conduct on its behalf the 2015 Annual Hearing on the Power Plant Siting and Transmission Line Routing Program required by Minn. Stat. § 216E.07 (2014). The Annual Hearing has two key purposes. First, it is intended to advise the public of matters relating to the siting of large electric power generating plants and the routing of high voltage transmission lines. Second, the annual hearing affords interested persons an opportunity to be heard regarding the Commission's activities, duties, and policies under the Power Plant Siting Act (PPSA)¹ and the Commission's Power Plant and Transmission Line Siting Rules.²

Administrative Law Judge James E. LaFave conducted the public hearing at 9:30 a.m. on December 1, 2015, at the Saint Paul offices of the Minnesota Public Utilities Commission. Following a 35-day public comment period, the hearing record closed at 4:30 p.m. on January 5, 2016.³

Notice of the Annual Hearing

The PPSA requires the Commission to hold a public hearing each year in order to afford interested persons an opportunity to be heard regarding any matters relating to the siting of large electric generating power plants and routing of high-voltage transmission lines.⁴ The Commission must provide at least ten days but no more than 45 days' notice of the annual hearing, along with a tentative agenda for the hearing. The hearing notice must be mailed or served electronically on persons who have

¹ See Minn. Stat. ch. 216E (2014).

² See Minn. R. 7850.1000-5600 (2015).

³ Notice of the Power Plant Siting and Transmission Line Routing Program Annual Hearing at 2 (November 10, 2015); Transcript (Tr.) of 2015 Annual Hearing on the Power Plant Siting and Transmission Line Routing Program at 5 (December 1, 2015).

⁴ Minn. Stat. § 216E.07.

requested notice and must be published in the *EQB Monitor* and on the Commission's calendar.⁵

On November 10, 2015, the Commission served notice of the annual hearing on those persons who requested notice.⁶ The notice, which included a tentative agenda, was published in the *EQB Monitor* (an electronic newsletter issued by the Environmental Quality Board) on November 9, 2015,⁷ and was posted on the Commission's web calendar.⁸

Approximately four members of the public, not including staff of the Department of Commerce (DOC), the Department of Natural Resources (DNR), or the Commission, attended the hearing.⁹ None of those individuals gave oral testimony during the hearing. Following the hearing, three additional individuals provided written comments.¹⁰ These comments are discussed in detail below.

Introductions and Comments from PUC and DOC Staff

A. Michael Kaluzniak, Public Utilities Commission¹¹

Michael Kaluzniak, a staff person in the Energy Facilities Planning Unit of the PUC, explained that the Commission's staff manages the general oversight of applications submitted to the Commission for the construction of large energy facilities in Minnesota, including electrical power plants, transmission lines, wind power generation plants, and natural gas facilities. Prior to each Commission decision on these matters, the staff summarizes the positions of the parties and provides recommendations and an analysis of the process to date. Mr. Kaluzniak indicated that the Commission's review process also incorporates the requirements of the Minnesota Environmental Policy Act or MEPA, which provides for a broad spectrum of public participation, including notice and time for people to provide comments. Mr. Kaluzniak and the PUC staff were present during the hearing to listen and respond if there were questions or comments about the process.

⁵ See *Id.*; Minn. R. 7850.5400, subp. 2.

⁶ Certificate of Service of Margie DeLaHunt and attached Service Lists (November 10, 2015) (eDocket No. 201511-115603-02).

⁷ *EQB Monitor*, Vol. 39, No. 23, published on November 9, 2015. (eDocket No. 20162-117927-01).

⁸ See PUC Calendar for December 1, 2015, hearing which incorporates a link to the Hearing Notice in the eDocket for this matter, available at <http://www.trumba.com/calendars/mn-puc?trumbaEmbed=date%3D201512101>.

⁹ See Public Hearing Sign-In Sheet (December 1, 2015) (eDocket No. 201512-116215-04).

¹⁰ See Written Comment of Marie McNamara (January 4, 2015) (eDocket No. 20161-116973-01); Written Comment of Jesse Jesse (December 29, 2015) (eDocket No. 20161-117025-01), Written Comment of Sarah Rohman (January 5, 2016) (eDocket No. 20161-117025-01).

¹¹ Tr. at 8-9 (December 1, 2015) (Testimony (Test.) of Michael Kaluzniak).

B. *Kate Kahlert, Public Utilities Commission*¹²

Kate Kahlert, an attorney in the Commission's Legal Unit, provided an update of the Commission's pending rulemaking efforts. Ms. Kahlert stated that the Commission is working on possible amendments to the rules governing the certificates of need and permits for power plants and power lines. At present, PUC staff is preparing briefing papers regarding the proposed rules, and once those are completed they will be distributed to the rule advisory committee, as well as persons on the rule making service lists. Ms. Kahlert also stated a Commission meeting has not yet been scheduled to consider the proposed rules. The meeting date will be publicized once it has been set.

C. *Tracy Smetana, Public Utilities Commission*¹³

Tracy Smetana, the Commission's Public Advisor, explained her role is to assist citizens in participating in the various Commission processes. She indicated that, over the past year, PUC staff has made enhancements to citizen information materials, including meeting handouts and notices to make them more understandable and ensure they comply with the Governor's plain language initiative.

Ms. Smetana reminded those assembled that at last year's meeting one of the enhancements that was introduced was the Speak Up online comment tool. Speak Up has been in place for just over a year and is available for the public to use when there is an open period to provide comments to the Commission or the Office of Administrative Hearings on a particular topic. Ms. Smetana also stated that additional enhancements for Speak Up are in progress that will enable, among other things, members of the public to add attachments to their comments.

Ms. Smetana also mentioned that the Commission has a new web site, and that certain changes, not related to the public advisor or the projects under discussion in this hearing, had been made there as well.

D. *David Birkholz, Department of Commerce*¹⁴

David Birkholz is employed by the Energy Environmental Review and Analysis unit (EERA) of the DOC. Mr. Birkholz explained that the EERA is responsible for the environmental review of all large energy facility applications that come in under the PPSA. He explained that the EERA is tasked with providing technical assistance to the Commission in the permitting process. In 2015, the EERA prepared six environmental review documents, five of which were environmental assessments for projects under the alternative permitting process. In addition, the EERA prepared an Environmental Impact Statement for the Great Northern Transmission Line in Northern Minnesota.

Mr. Birkholz provided a document prepared by the EERA entitled "Power Plant Siting Act: 2015 Year in Review," which was received into the hearing record.¹⁵ This

¹² *Id.* at 9-10 (Test. of Kate Kahlert).

¹³ *Id.* at 10-11 (Test. of Tracy Smetana).

¹⁴ Tr. at 12-13 (Test. of David Birkholz).

document summarizes the power plant and transmission line projects that were permitted during 2015, as well as projects that are currently involved in the permitting process. According to the summary, one power plant was permitted in 2015 and four power plants and seven transmission lines are currently in the permitting process. Also, the EERA staff released five environmental assessments in 2015, as well as one Environmental Impact Statement. The EERA summary includes a chart that identifies and describes each project and provides the date on which the Commission issued its decision concerning the project.

E. *Jamie Schrenzel, Department of Natural Resources*¹⁶

Jamie Schrenzel is employed by the Minnesota Department of Natural Resources (DNR) which has general jurisdiction over public lands, waters and wildlife in Minnesota. Ms. Schrenzel explained the DNR's responsibilities include issuing licenses permitting the passage of utilities over, under, or across, public land and waters and ensuring that such projects have a minimum adverse impact on the environment.¹⁷ Ms. Schrenzel went on to explain that the DNR staff provides input regarding natural resource topics during early project planning, public comment periods, meetings with affected members of the public, and project development and construction.

Ms. Schrenzel then described the DNR's approach to fulfilling its responsibilities. According to Ms. Schrenzel, the DNR seeks to encourage early coordination with developers, provides information about its permits, provides technical expertise and suggests alternatives for analysis. She indicated that this approach encourages avoidance of natural resources impacts and permitting conflicts. The DNR also strives to provide the Commission with the data and options that it needs to make decisions to help balance environmental impacts with other siting factors.

Ms. Schrenzel noted that, during 2015, the DNR worked in coordination with the EERA and other state agencies regarding various energy projects. For example, the DNR is currently working with the developers of solar projects to help them develop seed mixes that can help improve the soil underneath the projects and provide habitat for pollinators. The DNR also participated in the review of large transmission projects, particularly those located in northern Minnesota where large areas of forest and public lands may be impacted. Ms. Schrenzel observed that the DNR encourages co-location with existing rights-of-way to decrease forest fragmentation.

Ms. Schrenzel emphasized that the DNR spent considerable time in 2015 participating in proceedings and interagency work groups regarding oil pipelines. These are complex projects that have the potential of significant impact on natural resources. The DNR provides regulatory and technical comments as well as providing the Commission with options for avoiding impacts. Ms. Schrenzel commented that the DNR also coordinates with wind developers regarding the construction of wind projects.

¹⁵ Ex. 2.

¹⁶ Tr. at 13-17 (Test. of Jamie Schrenzel).

¹⁷ See Minn. Stat. § 84.415 (2014); Minn. R. ch. 6135 (2015).

Finally, Ms. Schrenzel noted a wildlife survey protocol document, jointly developed by the DOC and DNR is now available. The wildlife survey protocol was the product of years of coordination and is currently accessible on the DNR website.

A document prepared by the DNR entitled “Minnesota Department of Natural Resources Testimony Notes,” was received into the hearing record and summarized the testimony provided by Ms. Schrenzel at the hearing.¹⁸

Summary of Written Comments Submitted

Written comments were received from Marie McNamara, Jesse Jesse, and Sarah Rohman during the comment period that ended at 4:30 p.m. on January 5, 2016.

A. Comments of Marie McNamara¹⁹

Marie McNamara of Goodhue, Minnesota, submitted a written comment on January 4, 2016. Ms. McNamara noted the early December hearing date was preferable to the traditional late December hearing date because it enabled more people to attend the hearing. Ms. McNamara had three comments and recommendations which are summarized below:

Ms. McNamara suggested that the Commission communicate to the legislature, through the clerks in both the House and Senate, the date and details of the PPSA hearing when the notice of hearing is issued. This would enable interested legislators to attend and it would lend transparency to the process.

In addition, she recommended that the Administrative Law Judge’s summary be submitted to the legislature through the clerks in the House and Senate. Ms. McNamara argued that the intent of the legislature was to provide an opportunity for comments and to allow legislative oversight to issues connected to the power plants and high-voltage transmission facilities. She believes a report back to the lawmakers is critical to satisfy the original intent of the PPSA. In addition, if the Administrative Law Judge’s summary is not returned to the lawmakers, she contended the comments would lose their value.

Ms. McNamara goes on to request that, even if not required by law, the Administrative Law Judge and the Office of Administrative Hearing use their judgment and provide the legislative clerks with the 2015 PPSA hearing summary.

Ms. McNamara believes that public participation in the site permit process for large electric generating power plants and routing of high-voltage transmission lines permit process is vital, and therefore notice to the public is crucial. She argued that any lack of notice to the public should trigger a “reset button” for public hearings and comment periods during the permitting process. Ms. McNamara asserted that the lack of proper notice to the public imposes a cost that outweighs any cost to the corporate applicant associated with providing adequate notice. She contends that corporate

¹⁸ Ex. 3.

¹⁹ Written Comment of M. McNamara (January 4, 2016) (eDocket No. 20161-116973-01).

applicants are too often allowed to rely on an argument that they made good faith efforts to provide sufficient notice, and urged that there be consequences for applicants who provide inadequate or no notice to the public.

Ms. McNamara noted that the topics for this public hearing include any matter related to the site permit process for large electric generating power plants. She asserted that Large Wind Energy Conversion Systems (LWECS) or wind turbines constitute large electrical generating power plants and should not be exempt from the statutory examination required by our state.

Ms. McNamara also argued that nothing is being done in PUC Docket No. 09-845 which relates to Industrial Scale Wind Turbines in Minnesota. She noted that this is a very large and growing docket which was established six years ago to address the health and safety issues surrounding large wind turbines. She requested that the Administrative Law Judge make note of the growing volume of comments and noise studies in PUC Docket No. 09-845, including a statement by the Minnesota Pollution Control Agency that Minnesota is not using the correct sound standard for LWECS. She argued that it is negligent to ignore such comments.²⁰

B. Comments of Jesse Jesse²¹

Jesse Jesse, address unknown, posted a written comment on Speak Up on December 29, 2015, expressing concern about a solar project being constructed near his home. He did not believe he was notified far enough in advance of the project and notes that his property values in the area have dropped by 30 percent.

C. Comments of Sarah Rohman²²

Sarah Rohman, address unknown, posted a written comment on Speak Up on January 5, 2016. Ms. Rohman believes that the public needs more specific instructions on the procedures and steps that must be taken to be heard in these proceedings. She participated in PUC Docket No. E99M15785. Although Ms. Rohman was pleased with the PUC's staff and the Environmental Impact specialist, she asserted that the administrative law judge who heard the case did not mention her comments in his report. She also complained that she and her family were unable to speak at the Commission meeting (where the decisions were actually made) because they were not a party to the proceedings. Despite the fact that she was able to send in written comments and make oral comments at the public hearing before the administrative law judge, Ms. Rohman does not believe her comments were heard by the people making the decisions.

²⁰ Ms. McNamara requested inclusion and mention of the wind turbine noise problem and PUC Docket No. 9-845 into the PPSA Administrative Law Judge summary. In addition she "submitted this request as a formal complaint to the Office of Administrative Hearings, and cc: the MN Attorney general, the MN Department of Health, and the MN Pollution Control Agency." The Administrative Law Judge notes there is no applicable complaint process or redress that can be provided by the Office of Administrative Hearings regarding the handling of a PUC docket.

²¹ Written Comment of J. Jesse (December 29, 2015) (eDocket No. 20161-117025-01).

²² Written Comment of S. Rohman (January 5, 2016) (eDocket No. 20161-117025-01).

Ms. Rohman suggested that the Commission prepare and distribute a clear, concise, step-by-step summary telling members of the public exactly how to have an actual voice and how to speak to the ones making the decisions.

Dated: February 8, 2016



JAMES E. LAFAVE
Administrative Law Judge

Reported: Transcript Prepared by Shaddix & Associates



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February 10, 2016

See Attached Service List

Re: In the Matter of the 2015 Annual Hearing on the Power Plant Siting and Transmission Line Routing Program

**OAH 60-2500-32901
MPUC E999/M-15-785**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **REPORT TO THE COMMISSION** in the above-entitled matter.

If you have any questions, please contact my legal assistant Rachel Youness at (651) 361-7881 or rachel.youness@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,

A handwritten signature in black ink that reads 'James E. Lafave'. The signature is written in a cursive style with a large, sweeping initial 'J'.

JAMES E. LAFAVE
Administrative Law Judge

JEL:ry
Enclosure
cc: Docket Coordinator

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CERTIFICATE OF SERVICE

In the Matter of the 2015 Annual Hearing on the Power Plant Siting and Transmission Line Routing Program	OAH Docket No.: 60-2500-32901
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Rachel Youness, certifies that on February 10, 2016 she served the true and correct **REPORT TO THE COMMISSION** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

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