



Minnesota Center for Environmental Advocacy

Using law, science, and research to protect Minnesota's environment, its natural resources, and the health of its people.

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August 24, 2018

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

VIA eFILING

Re: In the Matter of Possible Rulemaking to Amend Rules Chapter 7854
PUC Docket Number/s: E999/R-18-518

Dear Mr. Wolf,

Minnesota Center for Environmental Advocacy (MCEA) submits this letter in response to Goodhue Wind Truth's petition for rulemaking submitted July 30, 2018. The Commission requested comments on whether the petition for rulemaking meets the content requirements of Minn. R. 1400.2040 and whether the Commission should initiate a rulemaking on siting standards for Large Wind Energy Conversion Systems (LWECS). MCEA asserts that while Goodhue Wind Truth may have minimally met the requirements for what is contained in a petition, the Minnesota Public Utilities Commission should not initiate a rulemaking at this time.

1. Goodhue Wind Truth Minimally Complied With The Rule

The requirements of a petition to an agency to adopt, amend, or repeal a rule are relatively simple. *See* Minn. R. 1400.2040. The petition must include the name and address of the petitioner, the specific action requested, and the need for the requested action. *Id.* Although the petition presented to the Commission is not specific with respect to the amendments requested, there is sufficient information to discern that Goodhue Wind Truth seeks to amend Minnesota Rule chapter 7854 to include more detailed siting criteria and environmental considerations. The need for the requested action appears to be dissatisfaction with the current rule and the fact that two recent wind siting dockets have been controversial.

Although the petition could be more specific, MCEA does not believe that the Commission should reject an otherwise meritorious request based on an arguably technical deficiency. As described below, however, MCEA respectfully asserts that Goodhue Wind Truth has not presented a sufficient basis on which to re-open the wind siting rules.

2. The Commission Should Not Initiate A Rulemaking

Without weighing in on the functionality of the current wind siting rules or whether they could benefit from amendments, MCEA cautions against granting a petition to re-open a rulemaking based solely on one party's dissatisfaction with the current rules.

Goodhue Wind Truth claims in its petition that "there are no rules regarding criteria for siting LWECS." Cover Letter to Petition at 1. This is simply not true. The EQB published rules for the siting of LWECS in 2002, which are now housed in Minnesota Rules chapter 7854. These rules apply to all wind conversion systems greater than 5 MW. This was explained to Ms. Overland in the Commission's April 2, 2012 response to her previous petition for a rulemaking. Petition, Attachment C. The response clearly states that "Minnesota Rules Chapter 7854: Wind Siting was promulgated in 2002. These rules apply to large wind energy conversion systems 5 MW and larger in size." *Id.* There is therefore no merit to the contention that there are no applicable rules.

It is possible that Goodhue Wind Truth is actually attempting to declare the rule invalid by claiming that it does not contain siting criteria or requirements for environmental review, but this is also inaccurate. The siting criteria contained in the rule are adopted from statutes: that LWECS must be sited in an orderly manner that is compatible with environmental preservation, sustainable development, and the efficient use of resources. Minn. R. 7854.0200, Minn. Stat. § 216F.03. These criteria may be subjective, as admitted by the Environmental Quality Board in the Statement of Need and Reasonableness, but they exist. *See* Petition at 4.

Similarly, there are requirements for environmental review. Minn. R. 7854.0500, subp. 7. This subpart specifically states that "[t]he analysis of the environmental impacts required by this subpart satisfies the environmental review requirements of chapter 4410, parts 7849.1000 to 7849.2100, and Minnesota Statutes, chapter 116D." *Id.*

Accordingly, there is an existing rule applicable to LWECS 5 MW or greater, which contains both siting criteria and requirements for environmental review.

Other than the fact that certain recent projects have been more controversial than past projects, Goodhue Wind Truth has not alleged new evidence, technological developments, or unaddressed changes to the existing regulatory framework such that re-opening a rulemaking at this time is warranted.

Lastly, Goodhue Wind Truth seems to suggest that re-opening a rulemaking is warranted because certain aspects of the existing regulatory framework have been misapplied. The Petition includes allegations that siting dockets have not applied the criteria contained in Minn. Stat. § 216E.03 despite their applicability. Petition at 3. To the extent these allegations are well founded, they provide grounds for a legal challenge to siting decisions, not grounds to re-open siting rules.

MCEA appreciates the opportunity to comment on this request and reiterates that its recommendation to deny this request is not premised on the relative merits of the existing siting regulations, but is instead based on the assertion that the mere dissatisfaction of one party with existing rules is not ground on which to grant a petition to initiate a new rulemaking.

Sincerely,

/s/Leigh Curie

Leigh Currie

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