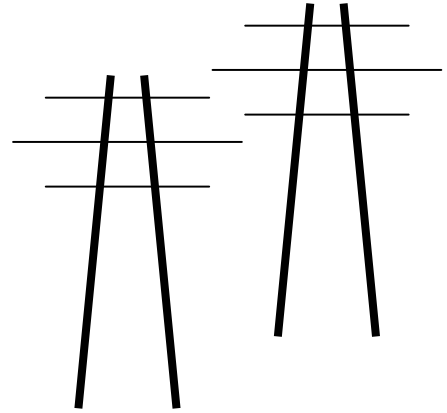


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August 24, 2018

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

eFiled and eServed

Tricia DeBleeckere
Commission Staff
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

eFiled and eServed

RE: Goodhue Wind Truth Comment and Amendment to be incorporated with
GWT's Rulemaking Petition
Possible Rulemaking to Amend Minnesota Rules Chapter 7854
PUC Docket E999/R-18-518

Dear Mr. Wolf:

Goodhue Wind Truth (GWT) submits this Comment in response to the Commission's Notice and Extension. The bulk of Goodhue Wind Truth's Petition was a historical recap, because how we got where we are is important. Goodhue Wind Truth purposely did not propose specific language for consideration, because that would not be helpful in this situation -- a unilateral proposal would not be a solution – but we have much to use as guidance and foundation. GWT has, however, included some specifics in this Comment, and wishes for this Comment to be included with its prior Petition and regarded as an Amendment to the Petition.

Minnesota needs this rulemaking, and in this rulemaking, we need a collaborative process at this point in time because for at least two decades, wind projects have been sited which failed to utilize the criteria mandated by Minn. Stat. §216F.02; projects have been found to have violated their permits; developers are “alarmed” at the prospect of future siting dockets; and communities on the ground have discovered the holes in the siting process and aren't likely to forget. It will take a broadly representative public effort to reach as near consensus as possible for future wind

projects to be sited in Minnesota. The Commission needs to shore up its basis for wind project permitting - a broadly populated rulemaking advisory committee is a must to make this happen and for wind projects to go forward.

Attached are the Initial Comments of Goodhue Wind Truth, the Petitioner in this matter. For years, Goodhue Wind Truth has been told that "Chapter 7854 is next." It's time.

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

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland". The signature is written in a dark ink and is positioned above the typed name.

Carol A. Overland
Attorney at Law

**BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Nancy Lange
Dan Lipschultz
Matt Schuerger
Katie Sieben
John A. Tuma**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**COMMENTS OF GOODHUE WIND TRUTH
REGARDING PETITION FOR RULEMAKING
TO THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

Goodhue Wind Truth offers these Comments regarding the Petition for Rulemaking, Minnesota Rules Chapter 7854 and has the following responses to the Commission’s questions. We have a starting point – guidance and foundation – found in the composite of the 1995 statutory mandate; the inadequate “rules” in Chapter 7854; the SONAR for those “rules;” the small wind siting standards; and the recently completed Minn. Ch. 7849 and 7850 Draft rules.

I. DOES THE PETITION FOR RULEMAKING MEET THE CONTENT REQUIREMENTS AS SET OUT IN MINN. R. 1400.2040, SUBP. 1?

Goodhue Wind Truth’s Petition meets the content requirements as set out in Minn. R. 1400.2040, Subp. 1, which requires:

1400.2040 PETITION FOR RULEMAKING.

Subpart 1. Content of petition.

A petition to an agency requesting rulemaking under Minnesota Statutes, section [14.09](#), must contain the following information:

- A. the name and address of the petitioner;
- B. the specific action (adoption, amendment, or repeal of an agency rule) requested by the petitioner; and
- C. the need for the requested action.

Part [1400.2500](#) contains a **recommended** format for the petition.

Minn. R. 1400.2040, Subp. 1(emphasis added).

Goodhue Wind Truth’s Petition for Rulemaking meets the requirements of this rule as it contains GWT’s name and counsel’s name and address, the specific action requested, and it lays out in detail the need for the requested action and the basis for GWT’s request.

The rule also refers to Minn. R. 1400.2500, which is a “recommended format for the petition.” That rule states, in pertinent part:

1. Explain the need or reason for the rulemaking you request. The agency will consider your reasons in making its decision, so your explanation must be detailed. You can use additional pages.
2. For a new rule, state the proposed new language of the rule. For rule amendments, repeat the text of the rule, striking through deletions and underlining new language. If you cannot provide new rule language, then write a detailed description of the rule that you are requesting. You can use additional pages.

Minn. R. 1400.2500.

The explanation was made in detail. As a part of its Petition, GWT noted the legislative mandate for rulemaking found in Minn. Stat. §216F.05, and the applicable parts of the Power Plant Siting Act, Minn. Stat. Ch. 216E.

216F.05 RULES.

The commission shall adopt rules governing the consideration of an application for a site permit for an LWECS that address the following:

- (1) criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment;

- (2) procedures that the commission will follow in acting on an application for an LWECS;
- (3) procedures for notification to the public of the application and for the conduct of a public information meeting and a public hearing on the proposed LWECS;
- (4) requirements for environmental review of the LWECS;
- (5) conditions in the site permit for turbine type and designs; site layout and construction; and operation and maintenance of the LWECS, including the requirement to restore, to the extent possible, the area affected by construction of the LWECS to the natural conditions that existed immediately before construction of the LWECS;
- (6) revocation or suspension of a site permit when violations of the permit or other requirements occur; and
- (7) payment of fees for the necessary and reasonable costs of the commission in acting on a permit application and carrying out the requirements of this chapter.

Minn. Stat. §216F.05. GWT attached as an exhibit the 2001 SONAR for the LWECS “rules,” which were adopted without comment and without a hearing, and the small wind standards that were adopted in early 2008.

Is GWT requesting new or amended rules? This is a mixed bag. The “rules” exist, but they do not address the topics of the legislative mandate – some do address portions of the mandate, but in large part, there’s not substantial compliance with the mandate. Walking through the statutory rulemaking mandate:

(1) criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment (216F.0.5)

The “rules” contain no “criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment;” and in practice the Dept. of Commerce and the Commission have listed the application contents requirement, Minn. R. 7854.0500, and made vague findings regarding those content requirements. This is not criteria, and these permits are not legitimate.

“Siting of LWECS” in the wind siting chapter is useless, with one vague sentence:

The legislature declares it to be the policy of the state to site LWECS in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

Minn. Stat. 216F.03.

Nothing in Minn. Stat. Ch. 216F exempts wind siting from the Minnesota Environmental Policy Act or the Minnesota Environmental Rights Act – there is no statutory exemption from environmental review. The LWECS chapter expressly does not exempt wind projects from the PPSA siting criteria found in Minn. Stat. §216E.03, Subd. 7, but the criteria in large part do not fit wind projects. Some do not apply at all, and there are criteria that should be considered in permitting review that needs be added. Minn. Stat. §216F.02.

As further guidance, the small wind standards offers an example, which can be adjusted for use for siting large wind projects. Again, it should be noted that the small wind siting standards have been expressly referred to and utilized in siting large wind projects, and this is not appropriate. Use of these small wind siting standards for LWECS puts all wind permits in question.

(2) procedures that the commission will follow in acting on an application for an LWECS (216F.05)

There are no procedures in the Minn. R. Ch. 7854 that the Commission is to follow. There is a schedule and process for accepting an application. Minn. R. 7854.0600. There is only a statement that “Upon completion of the procedures and requirements of this chapter, the matter must be brought to the commission for a final decision.” Minn. R. 7854.1000, Subp. 1. There is a schedule set for the Preliminary Determination and Draft Site Permit, but no procedures. Minn. R. 7854.0800. There are no “procedures and requirements of this chapter” to guide the

permitting process.

(3) procedures for notification to the public of the application and for the conduct of a public information meeting and a public hearing on the proposed LWECS.

There is a “Public Participation” rule, with specifics regarding notice, but it should be noted that landowners within the site boundary are not notified, only those “known to the PUC to be interested in the proposed LWECS project...” This is inadequate. Further, there are no specifics regarding the “conduct” of the public information meeting or public hearing. These matters should be set out in the rule, or refer to Minn. R. Ch. 7850 and/or Minn. R. Ch. 1405, as appropriate. Currently they do not refer to any other procedures.

(4) requirements for environmental review of the LWECS.

Nothing in Minn. Stat. Ch. 216F exempts wind siting from the Minnesota Environmental Policy Act or the Minnesota Environmental Rights Act – there is no statutory exemption from environmental review. The rules only establish only that specific environmental information is required in the wind project application, and then states that no formal environmental review is necessary.

The 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. No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.

Minn. R. 7854.0500, Subp. 7. No “analysis of the environmental impacts by this subpart” is required! The rule does not establish requirements for environmental review of the LWECS as required by the legislative rulemaking mandate. Application materials that include a narrative regarding a list of environmental information is not an analysis. Requiring environmental information in an application is not a requirement for environmental review.

(5) conditions in the site permit for turbine type and designs; site layout and construction; and operation and maintenance of the LWECS, including the requirement to restore, to the extent possible, the area affected by construction of the LWECS to the natural conditions that existed immediately before construction of the LWECS;

Some of the information mandated by the legislature is contained in the rules, but what is there is a quote from the mandate!

Conditions.

The commission may include in a site permit conditions for turbine type and designs, site layout and construction, and operation and maintenance of the LWECS, including the requirement to restore, to the extent possible, the area affected by construction of the LWECS to the natural conditions that existed immediately before construction of the LWECS and other conditions that the commission determines are reasonable to protect the environment, enhance sustainable development, and promote the efficient use of resources.

Minn. R. 7854.1000, FINAL SITE PERMIT DECISION.

Quoting the mandate is not a substitute for setting forth conditions, etc. in a rule. The requirement to restore the area is decommissioning, and in practice, the permit has not specifically addressed decommissioning, nor has the Commission required the decommission plan and financial assurance be specified prior to issuance of a permit. Decommissioning in practice is not addressed until AFTER the permit is granted, at a time and venue where there is no opportunity for public review and comment. This should be corrected.

(6) revocation or suspension of a site permit when violations of the permit or other requirements occur.

“Site Permit Amendment or Revocation” is specifically addressed in the rule, although the complaint process set forth in the permits is not effective, and which the Commission has ordered revised in the Big Blue permit because it is inadequate. Minn. R. 7854.1300.

(7) payment of fees for the necessary and reasonable costs of the commission in acting on a permit application and carrying out the requirements of this chapter.

Payment of fees is specifically addressed in the existing rule, although it is not clear whether and how these fees are collected. Minn. R. 7854.1500.

II. SHOULD THE COMMISSION INITIATE A RULEMAKING ON SITING STANDARDS FOR LWEC?

Yes. This rulemaking is long overdue. The “rules” issued previously, without a hearing, without comment period, without an Advisory Committee, were a sham. The justifications made in the Statement of Need and Reasonableness (SONAR) at that time were absurd (see SONAR), and today, they are revealing of the failure to seriously address environmental and siting concerns.

III. IF THE COMMISSION INITIATES A RULEMAKING, SHOULD IT ESTABLISH AN ADVISORY COMMITTEE TO ADVISE IT ON THE CONTENTS OF POSSIBLE RULES AS IDENTIFIED IN MINN. STAT. §14.101, SUBD. 2?

Yes, of course! Why wouldn't, why shouldn't an Advisory Committee be established? This is a very broad issue requiring wide range of input. Lack of rules, and inadequacy of what rules there are, is an issue of extreme importance to GWT, other wind docket intervenors and commenters, wind developers, utilities, the impacts are very broad. All affected parties must have the opportunity to participate in crafting these rules.

IV. ARE THERE OTHER RELATED ISSUES OR CONCERNS?

A primary concern of Petitioner GWT is the lack of siting criteria, and the failure of previous permits issued to be permitted under the siting criteria of Minn. Stat. §216E.03, Subd. 7. Each permit that GWT has reviewed has been expressly sited only under the authority of Minn. Stat. Ch. 216F and Minn. R. Ch. 7854. The Commission should not put itself in a position of permitting projects that do not use the statutorily prescribed criteria, that does not utilize the full range of public participation options, particularly that of appointing an Advisory Task Force

for wind projects.

Another concern is the inclusion of wind noise consideration and conditions of most permits, but with knowledge that the MPCA rule chapter cited does not take into account the characteristics of wind noise, and it expressly excludes inclusion of wind noise when wind is over 11 miles per hour, a logical problem when wind generation locations are chosen due to high wind speeds, and always with an average wind speed of over 11 miles per hour. A Petition for Rulemaking regarding noise standards was filed with MPCA and rejected, the MPCA Commissioner saying that they did not have sufficient information. Oh pshaw... The Commission needs wind specific noise standards. As “the enforcer” of noise standards, it is not wise for the Commission and Commerce to wait for the MPCA to update its standards when the Commission has been confronted with wind turbine noise issues and violations.

+++++

Specific suggestions for amendments and deletions – NOT all inclusive

If the Commission desires specific suggestions, GWT offers the following specifics for its consideration. This list is not all inclusive, but a short review of the high points that have proven problematic:

7854.0100 DEFINITIONS

Subp. 2 – should include cranes, other heavy equipment, county and township road and drainage changes which hae significant impact.

Subp. 4 – should specifically state “storage,” “access road,” and “road and drainage alterations”

Subp. 5 – “Chair” means ? “preliminary” should be “proposed” and delete “decision to issue”

Subp. 7 – 5 MW? ? Small wind “Standards” are for 5-25 MW (Docket 07-1102), Minn. Stat. §216F.012(a) small is “less than 25 megawatts.” Needs to be consistent.

Subp. 12 – ? 5-25MW again, Minn. Stat. §216F.012(a) small is “less than 25 megawatts”

7854.0200 –PURPOSE

The purpose should include mention of MEPA, i.e., “in an orderly manner compatible with environmental preservation and the Minnesota Environmental Policy Act, ...”

7854.0400 FILING APPLICATION FOR SITE PERMIT; PROTECTING DATA

Subp. 1 & 2 – outdated, should be updated to reflect eFiling and eService.

Sub. 3. Add: Intervenors shall have access to non-public data with execution of Non-Disclosure Agreement.

7854.0500 – SITE PERMIT APPLICATION CONTENTS

Subp. 1(B) – Should be street address, not a P.O. Box

(F) – operator and **OWNER**

(G) – add: “party” to be the permittee if a site permit is issued

Subp. 2: D. Where there is no certificate of need required or issued, issues of size, type and timing may be considered by the Commission.

Subp. 3. Add: Wind projects are not exempted from the Minnesota Environmental Policy Act and the Minnesota Environmental Rights Act.

Subp. 4(B)(10) Windrose – should be independently verified

(C) Ice information and ice throw prediction

Subp. 5 – Add: Wind rights shall be independently verified by the Commission.

Subp. 6 – Should be more specific, and pre-application meetings should be opened up

Subd. 7 – Lack of environmental review for wind projects is the primary problem to be addressed. The rule improperly characterizes the application as an “analysis” which it is not, therefore the following change should be made:

An applicant for a site permit shall include with the application ~~an analysis~~
a narrative of the potential impacts of the project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas

As above, two sentences should be deleted, as there is no environmental review analysis

in the application, only a narrative regarding a list of subjects. The Commission or Commerce EERA have not conducted “environmental review.” The sentences to be deleted are:

~~The 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. No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECs project.~~

Subp. 11 – the Schedule should also include dates necessary for compliance to obtain tax credits, etc.

Sub. 13 – this information must be provided and is not. The subpart should include:

The information must be provided or application is not complete, and no application will be granted without provision of this information with opportunity for staff, agency, and public review and comment.

The application content rule should include the following:

Provision of false information shall be grounds for rejection of the application.

If an application is deemed not complete, or further information is required, any delays waiting for applicant to provide information tolls the deadline for issuance of the permit.

7854.0600 – APPLICATION ACCEPTANCE

Subp. 1 – Applications should not be conditionally accepted. Add:

If more information is required, the time limits for permitting is tolled until applicant provides the information.

If an application is accepted as complete, it is not a determination that the application contains everything required, but is only a determination that it is “substantially complete,” sufficient to move forward.

7854.0900 - PUBLIC PARTICIPATION

Subp. 1 – Notice should contain information about how to propose permit conditions.

Subp. 2 – Notice requirements are deficient. There is no requirement that notice be provided to all landowners in the site boundaries. Adjacent landowners should also be provided notice. **See Notice requirements of Minn. R. 7849 and 7850 for suggestions.**

Under Minn. Stat. §216F.02, the PPSA's Public Participation statute expressly applies, and Minn. Stat. §216E.08 specifically includes appointment of an Advisory Task Force. The rule should reference Minn. Stat. §216E.08 and use of an Advisory Task Force.

7854.1000 – FINAL SITE PERMIT DECISION

Subp. 4 – Conditions - -the opportunity to propose conditions should be a part of the Notice required by 7854.0900 Subp. 1.

Thank you for the opportunity to submit these comments.



Date: August 24, 2018

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