

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

In the Matter of the 2017 Annual Hearing
on the Power Plant Siting and Transmission
Line Routing Program

REPORT TO THE COMMISSION

On November 20, 2017, the Minnesota Public Utilities Commission requested that the Office of Administrative Hearings conduct on its behalf the 2017 Annual Hearing on the Power Plant Siting Act Programs, held pursuant to Minn. Stat. § 216E.07 (2016).¹ Administrative Law Judge Eric L. Lipman conducted the public hearing commencing at 9:30 a.m. on December 22, 2017, at the Saint Paul offices of the Minnesota Public Utilities Commission.

Following an extended public comment period, the hearing record closed at 4:30 p.m. on February 9, 2018.²

The Annual Hearing has two key purposes. It is intended to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines. Additionally, the annual hearing affords interested persons an opportunity to be heard regarding the Commission's activities, duties or policies pursuant to the Power Plant Siting Act.³

I. Notice of the Annual Hearing

Minn. Stat. § 216E.07 requires the Commission to hold an annual public hearing 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. The Commission must provide at least ten days but no more than 45 days' notice of the annual meeting. This must be accomplished by mailing or serving electronically a notice to those who have requested to receive one and by publication in the *Environmental Quality Board Monitor (EQB Monitor)* and the Commission's weekly calendar. Additionally, the notice of the hearing must be accompanied by a tentative agenda for the hearing.⁴

¹ See Notice of the Power Plant Siting and Transmission Line Routing Program Annual Hearing, (Nov. 20, 2017) (Submission No. 201711-137509-01) (Hearing Notice).

² Public Hearing Transcript (Hearing Tr.), at 121–22 (Dec. 22, 2017).

³ See Minnesota Statutes Chapter 216E; Minnesota Rules Chapter 7850.1000 to 7850.5600 (2017).

⁴ See Minn. Stat. § 216E.07 (2016); Minn. R. 7850.5400, subp. 2 (2017).

On November 20, 2017, the Commission served notice of the annual hearing, along with a tentative agenda, to those persons who requested notice.⁵ The Commission also posted the Notice of Hearing on the Commission's web calendar throughout notice and public comment periods.⁶ The Notice was published in the *EQB Monitor* on January 15, 2018.⁷

Because the Notice was not published in the *EQB Monitor* prior to the hearing, the Commission, on its own initiative, extended the comment period from January 19, 2018 to February 9, 2018. The extension was made in order to afford interested persons an opportunity to submit comments after publication in the *EQB Monitor*.⁸ Furthermore, the Commission invited input as to whether a second public hearing was needed.⁹

Approximately 15 members of the public attended the public hearing. Nine individuals gave oral testimony during the hearing, and one of these individuals submitted additional comments in writing.¹⁰ These comments are summarized below.

II. Introductions from PUC and DOC Staff

A. Cezar Panait, Public Utilities Commission¹¹

Cezar Panait, an engineer at the Minnesota Public Utilities Commission, works in the Commission's Energy Facilities Permitting Unit. The Permitting Unit oversees the regulation of large energy facilities, such as large power plants and high-voltage transmission lines, under the Power Plant Siting Act. Additionally, the Unit oversees the permitting of solar generation facilities, wind farms, natural gas pipelines and petroleum pipelines.

Mr. Panait explained that whenever the Unit reviews permit applications for new or expanded energy facilities, notices are sent out to afford the public an opportunity to provide comments. One or more informational meetings are held "close to the actual project site," and the PUC welcomes written submissions through its Speak Up! system, electronic mail, or U.S. Mail.¹² Concurrent with any public input is a thorough environmental review, which considers the likely natural and human impacts of the pending project. After the record has been fully developed, Commissioners review and approve or deny the proposed project.

⁵ See Hearing Notice, *supra*.

⁶ See Commission Calendar, www.trumba.com/calendars/mn-puc (last visited on Feb. 12, 2018).

⁷ *Minnesota Environmental Quality Board Monitor*, Vol. 42, No. 3 (Jan. 15, 2016).

⁸ *Id.* at 2.

⁹ *Id.* at 2-3.

¹⁰ Hearing Tr. at 28-121; Exs. B, C, D, E; Comment by Carol A. Overland (Feb. 9, 2018) (Submission No. 20182-139955).

¹¹ Hearing Tr. at 10-16.

¹² *Id.* at 14.

B. David Birkholz¹³

David Birkholz, a representative from the Department of Commerce, Energy Environmental Review and Analysis Unit, described the Department's involvement in power plant and transmission line approvals during 2017.

The Unit's central purpose is to perform environmental review – assessing the likely natural and human impact of proposed projects – under the Power Plant Siting Act.¹⁴ These reviews assess the features of particular proposals and the relative merits of potential alternatives. The Unit also provides ongoing technical support to the Commission, ensuring that all projects comply with standards set forth in the Act.¹⁵

Mr. Birkholz explained that the Department has assembled a group of stakeholders to draft a decommissioning plan for installations that are scheduled to cease operations.¹⁶ Depending upon features of particular projects, the Department may recommend repowering, reconfiguring, rebuilding, or leaving untouched facilities that have come to the end of their permit period.¹⁷

Mr. Birkholz provided a list of projects that were reviewed by the Unit during the past year. This list was segmented so as to detail projects that have been permitted, projects that are still in review process, projects that are awaiting review, and a breakdown of the reviews that were performed for each project.¹⁸

III. Summary of Public Hearing Testimony

Ten individuals provided testimony at the public hearing on December 22, 2016. Additionally, one individual submitted written comments by the close of the comment period at 4:30 p.m. on February 9, 2018. Those comments are summarized below.

A. Cynthia Warzecha¹⁹

Cynthia Warzecha, an energy planner with the Department of Natural Resources (DNR), summarized the DNR's involvement with energy infrastructure projects covered by the Act in 2017, as well as matters the Commission should consider as it reviews projects this year.²⁰

Noting that the DNR provides input on natural resource matters at all phases of project review and implementation – including early project planning, public comment

¹³ *Id.* at 16-22.

¹⁴ *Id.* at 17.

¹⁵ *Id.* at 17.

¹⁶ *Id.* at 17.

¹⁷ *Id.* at 19.

¹⁸ *Id.* at 21.

¹⁹ *Id.* at 22-28.

²⁰ *Id.*

periods, public meetings, project development and construction²¹ – Ms. Warzecha’s testimony touched upon four key points:

- (a) The DNR “generally agrees” with the Commission’s proposed changes to rules governing certificates of need and site and route permits for large electric power plants and high-voltage transmission lines.²²
- (b) The DNR spent considerable time in 2017 analyzing the environmental impact of the Line 3 pipeline project.
- (c) The DNR continued assisting solar companies in developing site plans and monitoring protocol for project sites.
- (d) The DNR worked with the Commission and the Department of Commerce to amend the language of site permit criteria for wind projects. Notably, this process will mandate “proper turbine siting” and feature “turbines up to the manufacturer’s standard cut-in speed from April 1st through October 31st, which is projected to decrease bat fatalities between 25 and 30 percent.”²³

Notwithstanding these efforts, the DNR remains concerned that projected future increases in commercial turbines, the effects of white-nose syndrome and decreases in insect populations will result in a significant number of cumulative bat fatalities over time.²⁴ The DNR requests that the Commission keep these trends in mind, and it looks forward to working with the Commission and the Department of Commerce to minimize bat fatalities on existing and new commercial wind projects in Minnesota.²⁵

B. Remarks of Jeff Schmidt²⁶

Jeff Schmidt, a resident of Mankato, Minnesota, focused his comments on power line installations proposed under the so-called Huntley-Wilmarth project.²⁷ Mr. Schmidt believes that, if approved, the power lines would cross his land, thereby diminishing the value of limestone and fracking sand underlying his property. Having planned to sell these resources, Mr. Schmidt requests that the relevant agency compensate him for any lost revenue.²⁸ Mr. Schmidt and his neighbor, Randy Westman, are preparing a valuation report to present to the Commission if the Huntley-Wilmarth project is approved.²⁹ Mr. Schmidt likewise requested that the DNR and related authorities take

²¹ *Id.* at 23.

²² *Id.* at 24.

²³ *Id.* at 25. See also Ex. A

²⁴ Hearing Tr. at 26.

²⁵ *Id.* at 27.

²⁶ *Id.* at 28-34.

²⁷ *Id.* at 28-29

²⁸ *Id.* at 29.

²⁹ *Id.* at 30.

note of the calcareous fen in the area and avoid “disturbing or impacting” this resource.³⁰

Mr. Birkholz confirmed that the project is in the draft application stage, pending an arrangement between Xcel Energy, the City of Mankato, and the Department of Commerce.³¹

C. Remarks of John Munter³²

John Munter, a resident of Warba, Minnesota, undertook a colloquy with Mr. Birkholz about the decommissioning of crude oil pipelines. Mindful that the Department does not have an acting working group for decommissioning pipelines, Mr. Munter argued that one should be formed. He urged that such a group could guide the decommissioning of Enbridge Energy’s pipelines 1, 2, 3, 4 and 67.³³

Mr. Munter also inquired as to whether the DNR had studied alternative wind turbine designs that do not kill bats. On behalf of the DNR, Ms. Warzecha responded that the Department does not research emergent turbines, and she is not aware of any such turbines being used in commercial wind farming.³⁴

Mr. Munter then turned to the issue of methane emissions from natural gas. Mr. Munter maintained that fracked natural gas produces twice as much methane and carbon equivalent when compared to coal, and conventional natural gas wells emit about 50 percent more methane than coal.³⁵ Mr. Munter argues that the U.S. Environmental Protection Agency (EPA) has failed to monitor these impacts because it uses “best-case scenario” data instead of more reliable “flyover data.”³⁶ Mr. Munter also criticizes the use of shorter time frames when projecting the amounts of methane in the Earth’s atmosphere, as these understate the effects on global climate change.³⁷

Finally, Mr. Munter queried staff about Minnesota’s transmission line utilization.³⁸ Mr. Panait explained that transmission lines are designed to meet peak demand for electricity.³⁹ Not only would operating lines at closer to their rated limits be inefficient, but Mr. Panait raised the possibility that it may result in overheating. Mr. Munter encouraged the Commission to continue optimizing its demand schedule, so as to keep rates low and maximize the value of energy use.⁴⁰

³⁰ *Id.* at 33-34. See also eDocket Nos. 20182-140110-01, 20182-140110-02, 20182-140111-01, 20182-140111-02

³¹ Hearing Tr. at 31.

³² *Id.* at 34-41, 100-09, 117-21.

³³ *Id.* at 36.

³⁴ *Id.* at 37.

³⁵ *Id.* at 38.

³⁶ *Id.* at 39.

³⁷ *Id.* at 39-41.

³⁸ *Id.* at 117-21.

³⁹ *Id.* at 119.

⁴⁰ *Id.* at 119-21.

D. Remarks of Carol Overland⁴¹

Carol Overland, a resident of Red Wing, Minnesota, first attended a Power Plant Siting Act hearing in 1998, and believes that little has changed since then. Ms. Overland argues that Administrative Rules 7849, 7850, and 7854⁴² should be updated to better address wind energy and the externalities from wind turbines.⁴³ Ms. Overland maintained that wind projects must abide by the siting criteria laid out in the Power Plant Siting Act,⁴⁴ and that the Act requires the formation of a citizens advisory task force to evaluate each proposed wind project.⁴⁵

Ms. Overland urged that state executive branch agencies, including the Minnesota Pollution Control Agency, are chronically underfunded; such that they cannot fulfill their duties to the public. Furthermore, Ms. Overland believes that a “public advisor” should be designated to disseminate information to citizens that want to intervene or otherwise participate in siting decisions.⁴⁶ Along these lines, Ms. Overland encourages the Commission to better explain rate changes to the public; she believes that capital expenditures and overbuilding by energy companies, and not carbon-cutting technologies, are to blame for rising utility rates.⁴⁷

Ms. Overland offered Exhibits B, C, and D into the hearing record so as to detail her claim that the Power Plant Siting Act does apply to wind projects.⁴⁸

E. Remarks of Kristen Eide-Tollefson⁴⁹

Kristen Eide-Tollefson began by commending the Commission for its responsiveness to the points she raised in the 2017 Annual Hearing.

Ms. Eide-Tollefson offered into the record Exhibit E, “People, Power, and Process: the Need for Efficiency and Equity in Minnesota’s Energy Future,”⁵⁰ a report prepared by the 1980-81 Power Plant Siting Advisory Committee. Pointing to the aspirations listed in Exhibit E in 1980, Ms. Eide-Tollefson noted some important areas of progress that the Commission had achieved, including a rise in “economic participants [and] investors” in Minnesota’s energy systems, wind projects, solar projects, and demand-side management and efficiency.⁵¹ Ms. Eide-Tollefson encouraged the Commission to review the 1980-81 report and continue embracing public participation in energy project proceedings. In this spirit of participation, Ms. Eide-Tollefson noted the importance of including the public in pre-application reviews of any projects covered by

⁴¹ *Id.* at 42-53.

⁴² Minn. R. 7849, 7850 (2013).

⁴³ Hearing Tr. 43-44, 51-52.

⁴⁴ Minn. Stat. 216E.03.

⁴⁵ Hearing Tr. at 45; Minn. Stat. § 216E.08.

⁴⁶ *Id.* at 46-48.

⁴⁷ *Id.* at 48-50.

⁴⁸ *Id.* at 52-53.

⁴⁹ *Id.* at 54-58.

⁵⁰ Ex. E.

⁵¹ Hearing Tr. at 55.

the Act; the opportunity to “see what the Commission was going to be approving” was greatly appreciated.⁵²

F. Remarks of Kathy Hollander⁵³

Kathy Hollander began by commending the Commission for the process flowchart that it prepared to guide citizens who wished to provide feedback on pending matters. Ms. Hollander then offered some suggestions for greater outreach; including an online version of the flowchart and fact sheets that outline key provisions of the Power Plant Siting Act.⁵⁴ Ms. Hollander also recommended that the Commission improve its edocket system, possibly by creating a list of all active Commission dockets.⁵⁵

Additionally, Ms. Hollander maintained that the Commission has done a poor job of transferring institutional knowledge — namely about solar energy and its place in the electrical grid — between and among different dockets.⁵⁶ In Ms. Hollander’s view the Commission knowledge base about climate change could be used as starting point for environmental impact statement,⁵⁷ reducing the time and cost of gathering this data for each new review.⁵⁸

G. Remarks of Bret Eknes⁵⁹

Bret Eknes of the Public Utilities Commission offered some additional insight as to how the Commission draws from its repository of climate-related knowledge. On an annual basis, the Commission updates its range of values for environmental externalities. Every application to the Commission must include estimates of the proposed project’s social cost using these values.⁶⁰ Furthermore, Mr. Eknes explained that these values are used in integrated resource planning. These standard value sets, applied across all subject areas to proposed programs, demonstrate that past experiences inform the Commission’s present work.

H. Remarks of Stan Sattinger⁶¹

Stan Sattinger expressed concern that pipelines are not directly covered under the Power Plant Siting Act. Principally, Mr. Sattinger advocated for a set of statutes that would “address pipelines and wind” and match the standards set forth for transmission lines and power plants under the Power Plant Siting Act.

⁵² *Id.* at 56-57.

⁵³ *Id.* at 59-87.

⁵⁴ *Id.* at 59-60.

⁵⁵ *Id.* at 61-62.

⁵⁶ *Id.* at 74-75.

⁵⁷ *Id.* at 76-77.

⁵⁸ *Id.* at 81.

⁵⁹ *Id.* at 78.

⁶⁰ *Id.*

⁶¹ *Id.* at 88-100.

Mr. Cezar Panait and Mr. David Birkholz clarified that each energy project type has its own set of permitting standards: electric power facilities under Minn. Stat. ch. 216E; wind energy conversion systems under Minn. Stat. ch. 216F; and pipelines under Minn. Stat. § 216G.⁶²

Mr. Sattinger also raised concerns about Enbridge Energy's plans to limit environmental impacts from its proposed "Line 3" replacement project. The impact statement lays out a variety of measures that Enbridge, will take to limit environmental damage, including application of protective coating on the pipeline.⁶³ Mr. Sattinger asked whether there is an agency tasked with going out into the field and monitoring projects for compliance with these measures.

Larry B. Hartman, a Planning Director with the Minnesota Department of Commerce's Energy Environmental Review and Analysis Unit (EERA) was in the gallery of the hearing and came forward to provide testimony.⁶⁴ Mr. Hartman explained that the State's authority to permit and site pipelines comes from the Pipeline Safety Act, codified at Minn. Stat. ch. 216G. These statutes include different regulatory provisions depending upon whether the pipeline is interstate versus intrastate; transports natural gas or liquid petroleum; and is a franchise or a non-franchise pipelines.⁶⁵

Mr. Hartman noted that pipeline safety standards are beyond the Commission's jurisdiction for two reasons: the United States Department of Transportation administers pipeline safety standards under federal law,⁶⁶ and the Minnesota Office of Pipeline Safety inspects both interstate and intrastate pipelines within Minnesota.⁶⁷ Together, these two entities perform inspections during and after pipeline construction.

On matters other than safety standards, the pipeline may also need to secure licenses from other Minnesota agencies, such as the Minnesota Department of Agriculture or the Department of Natural Resources.⁶⁸ For example, where federal lands are crossed, there may be permitting requirements from the EPA and United States Fish and Wildlife Service.⁶⁹

I. Remarks of Janet Anderson⁷⁰

Janet Anderson expressed concerns about the pipeline inspection process. Mindful of Minnesota's history of oil spills, Ms. Anderson wondered whether the inspection process for existing pipelines is sufficient.⁷¹

⁶² *Id.* at 91.

⁶³ *Id.* at 93-94.

⁶⁴ *Id.* at 94-104, 110-17.

⁶⁵ Minn. Stat. ch. 216G (2016); Hearing Tr. at 94-95.

⁶⁶ This exclusive authority is granted under 49 C.F.R. § 195 (2011).

⁶⁷ This authority is granted under the Pipeline Safety Act, Minn. Stat. chs. 299J, 299F (2016).

⁶⁸ Hearing Tr. at 97-98.

⁶⁹ *Id.* at 98.

⁷⁰ *Id.* at 110-17.

⁷¹ *Id.* at 110.

Mr. Hartman offered that “about two-thirds” of spills are attributable to third-party accidents, oftentimes due to mechanical equipment accidentally striking the pipeline.⁷²

Ms. Anderson then asked Mr. Hartman to elaborate on the inspection process, particularly as to inspections during repairs to existing pipelines. Mr. Hartman explained that the Minnesota Office of Pipeline Safety is primarily responsible for conducting annual inspections and conducting periodic ground and air inspections.⁷³

IV. Summary of Additional Written Comments from Carol A. Overland

Carol A. Overland of Red Wing, Minnesota provided written comments that touched upon a variety of subjects; including additional detail in support of the comments she made in person, at the hearing on December 22, 2017.

Ms. Overland maintains that the siting of wind turbines is governed by the Power Plant Siting Act (PPSA) and that the Commission has been using inappropriate permitting criteria for siting such projects in the past. She argues that these projects should be assessed against the provisions of the Minn. Stat. § 216E.03 (2016).⁷⁴ Further, Ms. Overland assert that wind siting proceedings are not exempt from the public participation requirements of the Power Plant Siting Act.⁷⁵

Ms. Overland is critical of the slow pace of reform of Minn. R. ch. 7849 and 7850. She maintains that the revision process has been underway for six years, and that this rulemaking was initiated in response to legislative changes in 2005. She characterizes a 13-year reform effort as “obscene.”⁷⁶

Ms. Overland argues that there is an urgent need for “updated wind siting standards” and revising Minn. R. ch. 7854 and 7030. Ms. Overland asserts that many current wind projects violate the noise standards adopted in 2008, and the best way to resolve this problem is through updated rules.⁷⁷ Included with her comments, Ms. Overland provided a copy of the 2008 “Order Establishing General Wind Permit Standards,”⁷⁸ noise assessments from the Bent Tree Wind Farm,⁷⁹ and a response from the Commission to a “Request for Response to Alleged Site Permit Violations and to Show Cause” regarding the Big Blue Wind Farm.⁸⁰

E. L. L.

⁷² *Id.* at 112.

⁷³ *Id.* at 115.

⁷⁴ *Id.*

⁷⁵ See Minn. Stat. § 216E.08 (2016).

⁷⁶ Comment by Carol A. Overland, *supra*, at 1.

⁷⁷ *Id.*

⁷⁸ *Id.* at 4-19.

⁷⁹ *Id.* at 20-153.

⁸⁰ *Id.* at 153-55.

March 12, 2018

See Attached Service List

**Re: In the Matter of the 2017 Annual Hearing on the Power Plant Sitting
and Transmission Line Routing Program**

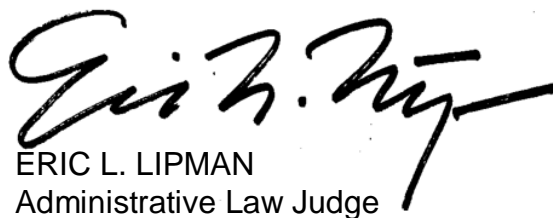
**OAH 8-2500-34843
MPUC No. E999/M-17-18**

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 Sheena Denny at
(651) 361-7881 or sheena.denny@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,



ERIC L. LIPMAN
Administrative Law Judge

ELL:sd
Enclosure
cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the 2017 Power Plant Sitting and Transmission Line Annual Hearing	OAH Docket No.: 8-2500-34843
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Sheena Denny, certifies that on March 12, 2018 she served the true and correct **REPORT TO THE COMMISSION** by eService to the service list in MPUC No. E999/M-17-18.