

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

In the Matter of the Power Plant Siting Act
Hearing

REPORT TO THE COMMISSION

On or about September 5, 2018, the Minnesota Public Utilities Commission (Commission or PUC) requested that the Office of Administrative Hearings conduct, on its behalf, the 2018 Annual Hearing on the Power Plant Siting Act Programs, pursuant to Minn. Stat. § 216E.07 (2018). Administrative Law Judge Kimberly Middendorf conducted the public hearing at 10:00 a.m. on November 14, 2018, at the Saint Paul offices of the Commission.

Following a 54-day public comment period, the hearing record closed on December 14, 2018, at 4:30 p.m.¹

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 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/or policies pursuant to the Power Plant Siting Act (PPSA).²

I. Notice of the Annual Hearing

Minnesota Statutes, section 216E.07 requires that the Commission hold a public hearing each year to afford interested persons an opportunity to be heard on any matter relating to the siting of large electric generating power plants and the routing of high-voltage transmission lines. The Commission must provide at least 10 days', but no more than 45 days', notice of the annual meeting, along with a tentative agenda for the hearing. The hearing notice must be mailed or served electronically to those persons who have requested notice and must be published in the *EQB Monitor* and on the Commission's calendar. At the meeting, the Commission is required to advise the public of the permits issued by the Commission in the past year.³

On October 22, 2018, the Commission served notice of the annual hearing, with a tentative agenda, to those persons who requested notice.⁴ The notice was published

¹ Public Hearing Transcript (T.), OAH Docket No. 2500-35537, at 6; Ex. H.

² See Minnesota Statutes, chapter 216E (2018); Minnesota Rules 7850.1000-.5600 (2017).

³ *Id.*

⁴ PUC Docket No. 18-18, Doc. ID 201810-147199-21, October 22, 2018.

in the *EQB Monitor* on October 29, 2018, and was posted on the Commission's web calendar throughout notice and public comment periods.⁵

Approximately ten members of the public attended the hearing, in addition to staff of the Commission, the Department of Commerce (Department), and the Department of Natural Resources (DNR).⁶ Four of those individuals gave oral testimony during the proceedings (three of whom also provided written comments). No other written comments were received.⁷

II. Introductions and Overview of Programs

A. Charley Bruce, Public Utilities Commission – Energy Facilities Permitting Unit⁸

Charley Bruce is the public advisor at the Commission. Mr. Bruce described his role at the Commission as a liaison between the Commission and the public and ensuring that the public understands how to participate in the process.

Mr. Bruce explained the duties of the Energy Facilities Permitting Unit. Staff in this unit oversee the regulation of power plants, high-voltage transmission lines, and solar projects covered by the PPSA. This unit also processes permits for wind generation facilities, and natural gas and petroleum pipelines. Applications are put through a rigorous review process that incorporates expertise from agencies and public input. With the assistance of the Department, environmental review is conducted. Public meetings are held near proposed projects. These meetings are presided over by an administrative law judge, who issues a report and recommendation to the Commission. After public deliberations, the commissioners make a final decision regarding the project. Mr. Bruce urged attendees at the meeting to contact him for help with participating in the energy facility permitting process.

B. David Birkholz, Department of Commerce – Energy Environmental Review and Analysis⁹

David Birkholz is employed by the Energy Environmental Review and Analysis unit (EERA) of the Department. Mr. Birkholz explained that the EERA conducts the environmental review that is required for proposed energy facilities in Minnesota, and provides technical expertise and assistance to the Commission with respect to permitting and regulating energy facilities, as authorized by the PPSA. In its role as technical advisor to the PUC, the EERA prepares protocols and guidance materials for permit applicants and permittees, conducts research into energy issues, and coordinates with and provides assistance to other state agencies in assessing environmental impacts associated with energy facilities.

⁵ See Ex. H and <https://mn.gov/puc/newsroom/calendar/#/?i=1> (last viewed December 17, 2018).

⁶ Ex. G.

⁷ *Id.*; see also PUC Docket No. 18-18.

⁸ T. at 8-11.

⁹ T. at 11-13.

Mr. Birkholz provided a document prepared by the EERA entitled “Power Plant Siting Act: 2018 Year in Review,” which was received into the hearing record.¹⁰ This document summarizes the power plant and transmission line projects that were permitted during 2018 as well as projects that are currently in the permitting process. According to the summary, the EERA assisted the PUC in permitting one high voltage transmission line (Freeborn Wind Farm). No power plants were permitted in 2018. EERA staff also prepared two environmental review documents and conducted compliance reviews of pre-construction projects. The EERA document includes a chart that identifies and describes each project and provides the date the Commission issued its decision concerning the project. The summary document also indicates that no power plant projects and five transmission line projects (Huntley-Wilmarth, Dodge County Wind, Blazing Star 2 Wind Project, Bull Moose, and Palisade) remained under review at the time of the public hearing. Two environmental impact statements are currently under development (Dodge County Wind and Huntley-Wilmarth). Mr. Birkholz encouraged members of the public to contact him and invited them to share their views on projects.

C. Cynthia Warzecha – Department of Natural Resources, Role of other State Agencies¹¹

Cynthia Warzecha, an energy projects planner, explained the DNR’s participation in energy projects permitted by the Commission. DNR provides input regarding impacts and other considerations pertaining to natural resources during the early planning process, public comment periods, meetings, and project development and construction. Ms. Warzecha explained that DNR’s approach continues to be encouraging early coordination with developers and stakeholders to provide information about DNR requirements, technical expertise, and potential alternatives for consideration. DNR believes this approach encourages avoidance of natural resource impacts and permitting conflicts.

Ms. Warzecha touched on some of the highlights for 2018. DNR revised its Guidance for Commercial Wind Energy Projects. She thanked the Commission and Department for working with DNR to reduce bat fatalities through siting and technology. Feathering of turbine blades is projected to reduce bat fatalities by 25-35%.¹² DNR also provided input into a decommissioning plan for a project, which it supports for use in future decommissioning plans.

Ms. Warzecha shared some of DNR’s current concerns. New wind turbine technology is driving larger projects and the decommissioning of smaller turbines for replacement with larger turbines. Larger turbines require larger setbacks. She cautioned that larger setbacks that extend onto public lands can cause impacts to native prairie and other sensitive resources. DNR would not support increased setbacks under those

¹⁰ PUC Docket 18-18, Doc. ID 201811-147631-01, November 6, 2018.

¹¹ T. 13-17.

¹² T. 15-16.

circumstances. Cumulative bat fatalities are also a serious concern of DNR. The combination of increasing numbers of turbine-related bat fatalities and white nose syndrome is likely to put pressure on Minnesota's bat population. DNR looks forward to working with the Commission and the Department to minimize the impacts of commercial wind projects.

III. Summary of Public Hearing Testimony and Written Comments Submitted¹³

The following individuals provided oral testimony at the Public Hearing on November 14, 2018:

- 1) Carol Overland
- 2) Kristi Rosenquist
- 3) Marie McNamara
- 4) Kathy Hollander

Written comments were received within the comment period ending at 4:30 p.m. on December 14, 2018,¹⁴ from the following individuals:

- 1) Carol Overland
- 2) Kristi Rosenquist
- 3) Marie McNamara

The written and oral comments received by 4:30 p.m. on December 14, 2018, are summarized below.

A. Carol Overland

Carol Overland, an attorney with Legalectric who has specialized in energy law for many years, provided comments during the public hearing, and filed written comments.¹⁵ Ms. Overland described her frustration with the process and does not believe the Commission is responsive to the concerns of Minnesota citizens. As an example, Ms. Overland explained that the Association of Freeborn County Landowners (AFCL) submitted exceptions and argument to the Commission in response to the administrative law judge's recommendation in the Freeborn Wind Energy contested case. AFCL's submission was not listed in the relevant documents in the staff briefing papers to the Commission for that project.¹⁶ This conveyed to Ms. Overland and the AFCL that the input of landowners affected by the project were not considered relevant by the Commission.¹⁷ Ms. Overland was complimentary of the eDockets system, but

¹³ NOTE: Where individuals submitted both oral testimony and written comments, those individuals' oral and written comments are summarized together below.

¹⁴ No comments have been submitted since the record closed.

¹⁵ T. at 18-23; 38-46; 61-72; 83-88; Exs. A-E; see also Comments of Carol A. Overland – Legalectric, Docket No. 18-18, Document ID 201811-147513-01, November 1, 2018.

¹⁶ Ex. B.

¹⁷ T. at 40-41.

asked that the Commission keep in mind that many rural Minnesotans do not yet have reliable internet access.¹⁸

Ms. Overland believes that the Commission and the Department are misinterpreting the PPSA.¹⁹ She disagrees with the Commission's position that the PPSA does not apply to large wind energy conversion systems (LWECS). Ms. Overland noted that Minn. Stat. § 216F.02 provides that chapter 216E is not applicable to the siting of LWECS, "except for sections 216E.01; 216.03E, subdivision 7; 216E.08; 216E.11; 216E.12; 216E.14; 216E.15; 216E.17; and 216E.18, subdivision 3, which do apply."²⁰ Specifically, Ms. Overland urges the Commission to utilize the criteria of Minn. Stat. § 216E.03, subd. 7 in the siting of LWECS.

Ms. Overland addressed the topic of rulemaking. Ms. Overland advocates rulemaking to create LWECS siting criteria because the statutory criteria in Minn. Stat. § 216E.03, subd. 7 are not specific to wind generation and do not address the unique concerns wind generation poses for neighbors. Ms. Overland stated that she has been petitioning the Commission for rulemaking in chapters 7849 and 7850 to address 2005 legislative changes to the PPSA since 2012 without success. Ms. Overland maintained that reliance on Minnesota Rules, chapter 7854 for wind siting criteria is misplaced because a single sentence directing that environmental considerations be taken into account is not criteria. Her 2018 petition for rulemaking as required by Minn. Stat. § 216F.05 was denied.²¹ She suggested a moratorium on siting LWECS until LWECS-specific siting criteria is developed.²²

Ms. Overland strongly objects to the use of the Order Establishing General Wind Permit Standards to site LWECS.²³ She noted that the Order is for use in county siting of wind projects and for siting projects under 25 megawatts. Ms. Overland argued that use of the Order to site LWECS is arbitrary and leads to serious problems for neighboring residents. As an example, she pointed to the Bent Tree wind project's 1000 foot setback. After nine years of complaints to the Department, it conducted a sound study of two homeowners more than a thousand feet from turbines who had exceedances of the noise standards. The developer was required to buy out these homeowners. Ms. Overland believes that proper siting criteria specific to LWECS could have avoided these problems.

Ms. Overland offered a number of suggestions to increase public participation and to make it more meaningful. She asked the Commission to consider putting people under oath at public meetings so the Commission can give their testimony greater weight. She supported funding for citizen participation, intervention, and expert

¹⁸ 84-85.

¹⁹ T. at 20, 61-65.

²⁰ Comments of Carol A. Overland – Legalectric, Docket No. 18-18, Document ID 201811-147513-01, November 1, 2018.

²¹ See Ex. C and D.

²² Comments of Carol A. Overland – Legalectric, Docket No. 18-18, Document ID 201811-147513-01, November 1, 2018.

²³ T. at 42-3; see also Ex. E.

witnesses to provide the Commission with more balanced information in permitting decisions. She asked that prehearing orders require transcripts to be placed in local public libraries as a matter of course to help keep the costs down for members of the public. Another idea Ms. Overland shared was to include more information about public participation in notices of hearing, prehearing orders, and reports. She requested that the Commission assemble a citizen task force on wind as authorized by Minn. Stat. § 216E.08. Ms. Overland suggested that the Department revamp its complaint process or that a complaint process be built into the rules.²⁴

Ms. Overland is critical of the alternative route requirement, which she believes pits neighbor against neighbor.²⁵ In Ms. Overland's opinion, this requirement unfairly shifts the burden of proof from a project proponent to its opponents, many of whom are the residents who will have to live with the project's impacts but cannot afford to pay an expert to prepare an alternate route.

Last, Ms. Overland renewed her suggestion that the Commissioner reinstate the PPSA annual hearing potluck.²⁶

B. Kristi Rosenquist

Kristi Rosenquist of Mazeppa, Minnesota addressed some of the concerns she has regarding wind energy projects.²⁷ Ms. Rosenquist was hesitant to provide public comment because it has been her experience that public input on individual wind projects has been routinely ignored.²⁸ She urged the Commission to put the interest of the citizens of Minnesota before those of wind developers and utilities.²⁹ From Ms. Rosenquist's perspective, the current Commission allows fewer opportunities for public participation than did prior commissions. She reported that the Commission does not decide in advance whether a request to offer public comment at a meeting will be granted, unlike prior commissions. This presents a significant hardship to members of the public who wish to address the Commission, as for many citizens it requires taking a day off from work and driving a significant distance to St. Paul, with no assurance that they will be allowed to give their testimony.³⁰

She appreciated that the Department clarified at the Freeborn Wind contested case hearing that the Minnesota Pollution Control Agency's (MPCA) state noise standards apply to all noise, and was disappointed when the Department and Commission staff later backed away from that interpretation.³¹

²⁴ T. 68.

²⁵ T. at 86-87.

²⁶ T. at 87.

²⁷ T. at 23-28, 46-52, 72-78; Comments of Kristi Rosenquist, PUC Docket No. 18-18, Document ID 201812-148508-01, December 14, 2018.

²⁸ T. at 23.

²⁹ T. at 24.

³⁰ T. at 46-7.

³¹ T. at 26-27.

Like Ms. Overland, Ms. Rosenquist takes exception to a lack of rulemaking to craft specific standards for citing LWECS.³² Ms. Rosenquist expressed her belief that the standards used by the Commission to issue site permits were created by the wind industry, which fail to protect the health, safety, and welfare of rural residents and their communities. She addressed at length various health concerns attributed to low-frequency noise generated by wind turbines. Ms. Rosenquist is disappointed that the Commission recognized low-frequency noise as a problem in 2010 and promised to address it, yet has not done so to date.³³ She reported that the Minnesota Department of Health has recommended the Commission address the health impacts of low-frequency noise from wind generation. These include sleep deprivation, migraines, tinnitus, and vertigo. Ms. Rosenquist stated that the MPCA, which has responsibility for the State Audible Noise Standard, Minnesota Rules, chapter 7030, has repeatedly informed the Commission that it should not apply that standard for siting LWECS because it is not a low-frequency noise standard and underweights the impact of low-frequency noise.³⁴ According to Ms. Rosenquist, the Minnesota Department of Health has concluded that wind turbines cause negative health effects.³⁵ She urged the Commission to adopt siting standards that will protect human health and the environment.

Ms. Rosenquist advocated for a more robust complaint process and response to noise and health complaints.³⁶ She believes the complaint process regarding wind turbines is broken. She objects to a process that allows a wind company to receive, report, and resolve a complaint. To her, this is like the police directing a husband to investigate his wife's claim of abuse at his hand. She feels that the most common response to these complaints is inaction.

Ms. Rosenquist is disappointed by the design of the University of Minnesota's low-frequency noise study.³⁷ She believes it is being influenced by the wind industry to downplay the effects of low-frequency noise on human health. Ms. Rosenquist urged the Commission to review the Public Health Impacts of Wind Turbines docket as new studies have been added on the health impacts of low-frequency noise.³⁸

³² T. 23-25; Comments of Kristi Rosenquist, PUC Docket No. 18-18, Document ID 201812-148508-01, December 14, 2018.

³³ T. at 48-9.

³⁴ T. at 49.

³⁵ T. at 72.

³⁶ T. at 49-52.

³⁷ T. at 73-76; Comments of Kristi Rosenquist, PUC Docket No. 18-18, Document ID 201812-148508-01, December 14, 2018.

³⁸ Comments of Kristi Rosenquist, PUC Docket No. 18-18, Document ID 201812-148508-01, December 14, 2018.

C. Marie McNamara

Marie McNamara is a resident of Goodhue, Minnesota.³⁹ She and her family farm in the Goodhue County area. She is also part of a group called Goodhue Wind Truth that formed ten years ago in response to a proposed wind project in Goodhue County. Ms. McNamara echoed the concerns shared by Ms. Overland and Ms. Rosenquist regarding the progress of rulemaking related to large wind projects.⁴⁰ She has been an active participant in rulemaking meetings and is frustrated that, after six years, no new rules have resulted. She was disappointed that PUC and Department staff recently recommended against Goodhue Wind Truth's petition for rulemaking for LWECS siting criteria.

Ms. McNamara discussed the applicability of portions of Minnesota Statutes, chapter 216E to wind projects pursuant to Minn. Stat. §216F.02.⁴¹ She expressed concern that for ten years, the public has been informed that the PPSA does not apply to wind projects. Ms. McNamara advocated that the annual meeting report be sent to Minnesota's legislative energy committees with a recommendation to review PUC Docket 09-845. Further, she stated that the PUC needs to begin rulemaking for wind development as authorized by statute.

Ms. McNamara addressed the shortcomings she has perceived in the complaint process.⁴² Instead of relying on wind companies to handle complaints residents have, she suggested a permit compliance docket be created.⁴³ This docket would provide an opportunity to create a public record for wind-related complaints. She believes that contracts offered by developers to land owners are predatory and that consumer protections should be mandated for inclusion. She advocated for buyouts for homeowners negatively impacted by nearby wind developments.

Ms. McNamara believes that the Commission and Department favor wind developers and need to take a harder look at the information developers provide in permit applications. She asserted the information developers provide is often false and in violation of Minn. Stat. § 216E.17.⁴⁴

D. Kathy Hollander

Kathy Hollander of Minneapolis, Minnesota addressed several topics.⁴⁵ First, Ms. Hollander suggested that public meetings begin with an acknowledgement of indigenous people who originally occupied Minnesota lands. Next, she thanked the

³⁹ T. at 28-33, 52-61; Comments of Marie McNamara, PUC Docket No. 18-18, Document ID 201812-148513-01, December 14, 2018.

⁴⁰ T. at 29-31.

⁴¹ T. at 31-2; see also Ex. F (copy of Minn. Stat. § 216F.02 (2018)).

⁴² T. at 57-59.

⁴³ Comments of Marie McNamara, PUC Docket No. 18-18, Document ID 201812-148513-01, December 14, 2018.

⁴⁴ T. at 32.

⁴⁵ T. at 79-83.

Commission because a number of items she requested be added to its website at last year's annual meeting have been added. She particularly appreciated the flow charts as very useful in helping citizens understand the fairly complicated process at the Commission.

Finally, Ms. Hollander described herself as an advocate for wind and solar. She acknowledged the concerns raised by other speakers at the meeting, but asserted that climate change demands a move to cleaner forms of energy like wind and solar. Ms. Hollander advocated for more forms of participation for stakeholders and increased communication between the Commission and the public to address concerns of residents affected by wind development.

Dated: January 3, 2019



KIMBERLY MIDDENDORF
Administrative Law Judge

Reported: Transcribed (Shaddix & Associates)