

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

In the Matter of the Annual Power Plant
Siting Act Hearing

REPORT TO THE COMMISSION

On or about August 15, 2019, the Minnesota Public Utilities Commission (PUC or Commission) requested that the Office of Administrative Hearings conduct, on its behalf, the 2019 Annual Hearing on Power Plant Siting Act, pursuant to Minn. Stat. § 216E.07 (2018).¹ Administrative Law Judge Barbara Case conducted the public hearing at 10:00 a.m. on November 19, 2019, at the Saint Paul offices of the Commission. The initial published post-hearing public comment period ended on December 6, 2019.² On December 27, 2019, the Commission extended the public comment period due to late-filed materials.³ The hearing record closed at 4:30 p.m. on January 28, 2020, following the published post-hearing extended public comment period.⁴

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 policies pursuant to the Power Plant Siting Act (PPSA).⁵

I. Notice of the Annual Hearing

Minnesota Statutes section 216E.07 and Minnesota Rules part 7850.5400 (2019) require 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. At the meeting, the Commission must inform the public of the permits issued by the Commission in the past year.⁶ 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.⁷ The hearing notice

¹ E-mail from Charley Bruce, Public Advisor, to Office of Administrative Hearings (Aug. 15, 2019) (on file with the Minn. Office Admin. Hearings).

² Notice of Power Plant Siting Annual Hearing (Oct. 18, 2019) (eDocket No. 201910-156726-01). On November 22, 2019, the Commission issued a notification regarding updated public comment procedures as the Commission discontinued use of the SpeakUp! Platform on November 1, 2019. See Updated Comment Procedures (Nov. 22, 2019) (eDocket No. 201911-157771-01); Public Hearing Transcript (Hearing Tr.) at 8-9 (Nov. 18, 2019).

³ Notice of Extended Comment Period (Dec. 27, 2019) (eDocket No. 201912-158628-02).

⁴ *Id.*

⁵ See Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2.

⁶ Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 1.

⁷ Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2.

must be mailed to or served electronically on those persons who have requested notice, and must be published in *Environmental Quality Board (EQB) Monitor* and on the Commission's calendar.⁸

On October 18, 2019, the Commission served, by U.S. Mail or electronic mail,⁹ the Notice of the Power Plant Siting Act Annual Hearing (Notice of Hearing) on those persons who requested notice.¹⁰ The Notice of Hearing contained a tentative agenda for the hearing, as required by Minn. R. 7850.5400.¹¹ On October 28, 2019, the *EQB Monitor* (an electronic newsletter issued by the Environmental Quality Board), published the Notice of Hearing.¹² The Commission also posted the Notice of Hearing on the Commission's web calendar throughout the notice and public comment periods.¹³

Staff of the Commission and the Department of Commerce attended the hearing and provided written testimony. One member of the public attended the hearing.¹⁴ Three individuals from various agencies provided written comments in lieu of oral testimony during the hearing, and six members of the public provided written comments during the comment periods.¹⁵ All comments received are summarized below.

II. COMMENTS FROM PUC AND DOC STAFF

A. Tricia Debleeckere, Public Utilities Commission

Tricia Debleeckere, Planning Director at the Public Utilities Commission, explained that Energy Facilities Permitting staff oversee the Power Plant Siting Act and the siting of projects.¹⁶ Commission staff provide oversight of the regulation of power plants, high voltage transmission lines, solar generation facilities, wind generation facilities, and natural gas and petroleum pipelines.¹⁷ During the siting and routing processes, the Commission staff review applications for completeness, hold public information meetings

⁸ *Id.*

⁹ Minn. Stat. § 216.17, subd. 2 (2018) permits service of notices by electronic mail.

¹⁰ See Certificate of Service and Service List (Oct. 18, 2019) (eDocket No. 20202-160190-01).

¹¹ Notice of Power Plant Siting Annual Hearing (Oct. 18, 2019) (eDocket No. 201910-156726-01).

¹² *Minnesota Environmental Quality Board Monitor*, Vol. 43, No. 43 (Oct. 28, 2019).

¹³ See Minnesota Public Utilities Commission Calendar, <https://mn.gov/puc/newsroom/calendar/> (last visited on Feb. 5, 2020).

¹⁴ Exhibit (Ex.) 8 (Dec. 20, 2019) (eDocket No. 201912-158481-08) (sign-in sheet); Hearing Tr. at 4-5.

¹⁵ Hearing Tr. at 5-9; Exs. 1 (Dec. 20, 2019) (eDocket No. 201912-158481-01) (Comment by Annette Fiedler), 2 (Dec. 20, 2019) (eDocket No. 201912-158481-02) (Comment by Tricia DeBleekere), 3 (Dec. 20, 2019) (eDocket No. 201912-158481-03) (Comment by Louise Miltich), 4 (Dec. 20, 2019) (eDocket No. 201912-158481-04) (Comment by Cynthia Warzecha), 5 (Dec. 20, 2019) (eDocket No. 201912-158481-05) (Comment by Stacy Kotch Egstad), 6 (Dec. 20, 2019) (eDocket No. 201912-158481-06) (Comment by Karen Kromar), 7 (Dec. 20, 2019) (eDocket No. 201912-158481-07) (Comment by Kate Kahlert); Comment by Laurie and Brad Johnson (Nov. 18, 2019) (eDocket No. 201911-157765-01); Comment by Marie McNamara (Dec. 6, 2019) (eDocket No. 201912-158098-01); Comment by Kristi Rosenquist (Dec. 6, 2019) (eDocket No. 201912-158097-01); Comment by Carol Overland (Dec. 6, 2019) (eDocket No. 201912-158096-01); Comment by Carol Overland (Dec. 15, 2019) (eDocket No. 201912-158326-01); Comment by Carol Overland (Dec. 18, 2019) (eDocket No. 201912-158454-10).

¹⁶ Ex. 2.

¹⁷ *Id.*

and project scoping, perform environmental reviews, and conduct public hearings.¹⁸ The Commission makes the final decision.¹⁹

Ms. Debleeckere highlighted two dockets that fall outside the standard permitting process.²⁰ First, Ms. Debleeckere discussed the wind and solar decommissioning docket. She emphasized that the docket comment period closes soon but that local and public input will remain important as the process moves forward.²¹ Second, Ms. Debleeckere mentioned the Power Plant Siting Act rulemaking, which Kate Kahlert, Commission staff attorney, discusses in more detail in her submitted comments.²² Ms. Debleeckere also introduced Charley Bruce, the Commission's Public Advisor, who assists and encourages public involvement in Commission proceedings.²³ She also provided a copy of written comments from Annette Fiedler, Southern Regional Development Commission (SWRDC), who could not attend the public hearing.²⁴

B. Kate Kahlert, Public Utilities Commission

Ms. Kahlert provided an update on the Commission's current rulemaking docket: E, ET, IP-999/R-12-1246.²⁵ Ms. Kahlert noted that this docket will amend Commission rules governing certificates of need and site and route permits for large electric power plants and high voltage transmission lines.²⁶ The Commission is still drafting the Statement of Need and Reasonableness (SONAR) and the Revisor's office is reviewing rule drafts.²⁷

C. Louise Miltich, Department of Commerce

Louise Miltich, Minnesota Department of Commerce (DOC) Energy Environmental Review and Analysis Unit (EERA), explained that DOC EERA conducts environmental reviews required for proposed energy facilities in Minnesota and provides technical support and compliance reviews to the Commission, as needed.²⁸ DOC EERA performs similar tasks for projects that fall under the Large Wind Energy Conversion System (LWECS) and the Pipeline siting statutes.²⁹

Ms. Miltich provided the "2019 Project Status" report, a document describing the permitting projects DOC EERA has reviewed in the past year.³⁰ In 2019, DOC EERA assisted the Commission in permitting eleven projects (two transmission lines and generation facilities, seven wind projects; and two pipelines) and prepared two

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*; see also Ex. 7.

²³ Ex. 2.

²⁴ Exs. 1-2.

²⁵ Ex. 7.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Ex. 3 at 1; see also DOC EERA Letter (Nov. 18, 2019) (eDocket No. 201911-157604-01).

²⁹ *Id.*

³⁰ *Id.* at 3.

Environmental Impact Statements.³¹ In addition, Ms. Miltich offered a lengthy list of permits in process in 2019, including eight transmission lines and generation facilities, six wind projects, and one pipeline.³² According to the list, DOC EERA is also preparing four environmental assessments, three environmental impact statements, and two environmental reports.³³ This list excludes projects in a planning or draft application status.³⁴ Ms. Miltich notes that several potential 2020 projects are in the pre-application stage, “including several hundred megawatts of solar and wind generation permit applications, with potential storage components, and several smaller transmission projects.”³⁵

Ms. Miltich mentioned the Minnesota Department of Agriculture (MDA) and its review of solar projects. She emphasized that:

Solar energy generation is an important component of Minnesota’s renewable energy portfolio, and its importance is likely to increase as non-renewable energy sources are phased out. However, the relatively large physical footprint of solar facilities means that their development is more likely to raise concerns about conversion and adverse impacts to farmland, forest land, and natural lands.³⁶

To better address the prime farmland exclusion rule found in the Power Plant Siting Act, the Commission asked DOC EERA and MDA to form a workgroup to evaluate stakeholders’ interests and priorities.³⁷ Ms. Miltich explained that DOC EERA and MDA requested that Management Analysis and Development (MAD) conduct a survey and hold workshops with stakeholders in the siting process to find areas of common ground for the siting of large-scale solar facilities in agricultural areas.³⁸ Ms. Miltich commented that DOC EERA and MDA intend to release MAD’s report, along with written guidance for project developers.³⁹

III. Summary of Written Comments Submitted

Only one member of the public attended the public hearing on November 19, 2019.⁴⁰ After confirming that this individual did not wish to speak at the hearing, the Administrative Law Judge permitted the six representatives from various state agencies to submit their comments in writing versus testifying because no other members of the public were present to hear their statements.⁴¹

³¹ *Id.*

³² *Id.* at 4.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 4, fn. 1.

³⁶ *Id.* at 1.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Ex. 8; Hearing Tr. at 4-5.

⁴¹ Hearing Tr. at 5-8.

In addition to the Commission and DOC EERA, the following individuals from state agencies provided written testimony at the public hearing on November 19, 2019:

- 1) Cynthia Warzecha, Minnesota Department of Natural Resources
- 2) Stacy Kotch Egstad, Minnesota Department of Transportation
- 3) Karen Kromar, Minnesota Pollution Control Agency

Written comments were received within the initial comment period ending at 4:30 p.m. on December 6, 2019, from the following individuals:

- 1) Annette Fielder
- 2) Laurie and Brad Johnson
- 3) Marie McNamara
- 4) Kristi Rosenquist
- 5) Carol Overland, Legalectric

Ms. Overland submitted additional comments on December 16, 2019, and December 18, 2019. No other written comments were received during the extended comment period which ended at 4:30 p.m. on January 28, 2020. The written comments received during the comment periods are summarized below.

A. Summary of Written Testimony from State Agencies

1. Written Statement from Cynthia Warzecha, Minnesota Department of Natural Resources

Cynthia Warzecha, Minnesota Department of Natural Resources (DNR), outlined the DNR's role in Power Plant siting and transmission line routing, including permitting activity.⁴² The DNR supplies feedback during the early planning process, public comment periods and meetings, and project development and construction.⁴³ Ms. Warzecha described the DNR's approach as furthering early coordination with developers and stakeholders to provide information on permitting, technical expertise, and to suggest alternatives for review.⁴⁴ According to the DNR, this method "encourages avoidance of natural resource impacts and permitting conflicts."⁴⁵ The DNR also assists the Commission with efforts to balance environmental impacts with other siting factors.⁴⁶

Ms. Warzecha highlighted the DNR's involvement in energy projects during 2019.⁴⁷ The DNR noted its support for the continuation of the rulemaking process for Minnesota Rules, Chapters 7849 and 7850 in Commission Docket R-12-1246.⁴⁸ The DNR favors the opportunity to provide comment following the final EIS for high-voltage transmission line projects.⁴⁹

⁴² Ex. 4. at 1.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

Ms. Warzecha commented on the DNR's involvement in providing recommendations on the decommissioning of wind and solar facilities.⁵⁰ The DNR supports the involvement of agencies with permitting authority in these activities, along with periodic review of decommissioning plans.⁵¹ The DNR also continues to participate in the Interagency Energy Working Group (IEWG) spearheaded by DOC EERA.⁵² One example of an ongoing discussion topic is the high rate of bat fatalities near permitted wind facilities.⁵³

Ms. Warzecha reviewed the DNR's current concerns.⁵⁴ The DNR would like to see its recommendations on permit conditions applied on a project-wide basis to address all sensitive environmental areas, not just those lands and waters that fall under its authority.⁵⁵ In addition, the DNR emphasized that the increased number of bat fatalities at wind energy facilities remains a concern.⁵⁶ The DNR notes that current mitigation efforts in the form of turbine curtailment at the manufacturer's cut-in speed may be insufficient to reduce bat fatalities in significant numbers.⁵⁷ The DNR points to studies that demonstrate that curtailments at higher cut-in speeds can be more effective, along with the consolidation of other mitigation measures.⁵⁸ Ms. Warzecha urges the Commission to consider the potential for bat fatalities in commercial wind projects prior to and following project construction.⁵⁹

2. Written Statement from Stacy Kotch Egstad, Minnesota Department of Transportation (MnDOT)

Stacy Kotch Egstad summarized MnDOT's role in Commission projects.⁶⁰ MnDOT protects current and future rights of way, the rights of Minnesota's "traveling public," and ensures the safety of MnDOT staff that conduct road construction and maintenance.⁶¹ MnDOT reviews projects for potential impacts on the state's transportation system and mitigation of those impacts.⁶²

MnDOT participates in pre- and post-Commission permit approval. In the pre-approval process, MnDOT conducts project review, submits scoping, EA, DEIS or FEIS comments and provides additional review as needed.⁶³ In addition, Ms. Kotch Egstad noted that MnDOT lends process support to utility permit applicants.⁶⁴ MnDOT's involvement in the post-approval permit process includes conducting project area review meetings concerning rights of way, serving as a resource for applicants to connect with

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 2.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Ex. 5 at 1.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

MnDOT staff, and providing utility guidance, review and issuance of various permits.⁶⁵ MnDOT examines projects for both immediate and secondary impacts on the state trunk highway system and adherence to relevant legal authority and policies.⁶⁶ MnDOT also reviews other impacts, such as evaluating the impact on other MnDOT offices, the type of road affected, existing utilities that may impede construction, Clear Zone requirements in project areas, traffic control measures, current and future freeway design, and special restrictions applicable to certain MnDOT structures.⁶⁷

In 2019, MnDOT began a coordinated effort with OES to review permits in sensitive areas, such as roadside vegetation management, cultural resources, contaminated and regulated materials, and threatened, and endangered species.⁶⁸ Like other commenters, Ms. Kotch Egstad mentions concerns for bat and bee habitats.⁶⁹

MnDOT recommends that the Commission ask applicants to “evaluate the effects of consolidation of collection lines, crane paths and other points of access prior to intersecting trunk highways.”⁷⁰ Ms. Kotch Egstad encouraged the Commission to update the current 250 foot setback requirement to follow a more restrictive setback that many counties use in the state.⁷¹ MnDOT recognizes that it has “no legal jurisdiction outside of MnDOT owned land, however, its request is based on a desire to help insure the safety of the traveling public first and foremost and secondly, to allow flexibility in future ROW expansion.”⁷²

3. Written Statement from Karen Kromar, Minnesota Pollution Control Agency

Karen Kromar is a project manager in the MPCA’s Environmental Review (ER) unit.⁷³ Ms. Kromar reviewed the MPCA’s role in the ER process.⁷⁴ The MPCA provides comments on siting and routing permits and on other ER documentation, primarily focused on construction storm water (CSW) permits, 401 Water Quality Certification, and noise issues.⁷⁵ The MPCA states that it reviews the proximity of projects to impaired waters, monitors the adequacy of required buffers around wetlands and surface waters, reviews the permanent treatment for storm water runoff, and monitors the number of acres disturbed to determine if further action is needed.⁷⁶ In addition, the MPCA reviews 401 Water Quality Certification requirements to determine if certification is necessary, and if so, to analyze the potential impacts and discuss any needed mitigation efforts.⁷⁷

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Ex. 6.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

Regarding noise issues, the MPCA monitors primarily for construction concerns, including timing of activities and mufflers on construction equipment.⁷⁸

The MPCA raised no specific concerns or issues, and Ms. Kromar commented that MPCA's issues are "usually well covered."⁷⁹

B. Summary of Written Public Comments

The following is a summary of written comments submitted during the public comment period.

1. Written Comments from Annette Fiedler, Southwest Regional Development Commission

Annette Fiedler, Southwest Regional Development Commission, requests that the Commission consider five items.⁸⁰ First, Ms. Fiedler questions whether solar should be permitted at the same size threshold as wind (5 MW) while retaining the county delegation provisions that exist for wind under Minn. Stat. § 216F.⁸¹ Second, she requests that the Commission evaluate how to manage and conduct the permitting of combined or joint projects with new associated technologies, such as wind and solar, plus storage considerations.⁸² Third, Ms. Fiedler highlights challenges in repowering of wind facilities and the 3x5 RD setback and urges the Commission to consider the use of FAA height thresholds as the basis for the 3x5 boundary setback, versus rotor diameter, at the initial stage of permitting.⁸³ Fourth, Ms. Fiedler asks the Commission to explore increased coordination between project developments and the MnDOT district office planner and the MnDOT state office to ensure coordination between their respective programs.⁸⁴ Lastly, Ms. Fiedler encourages the Commission to improve communication through increased notifications to local communities on project status, specifically construction delays.⁸⁵

2. Written Comments from Laurie and Brad Johnson

Laurie and Brad Johnson are residents of Walnut Grove, Minnesota.⁸⁶ The Johnsons urge the Commission to consider the protection of eagles when siting and routing large energy facilities.⁸⁷ The Johnsons report that eagles live in an area near County Road 10 and the Cottonwood River.⁸⁸ The Johnsons expressed concern with potential construction of wind turbines near their home, particularly in Plum Creek and Walnut Grove.⁸⁹

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Ex. 1.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Comment by Laurie and Brad Johnson (Nov. 20, 2019) (eDocket No. 201911-157765-01).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

3. Written Comments from Marie McNamara

Marie McNamara is a resident of Goodhue County, Minnesota.⁹⁰ She has participated in previous Commission cases and rulemaking processes.⁹¹ Ms. McNamara provides comments on the siting of large electric generating power plants and routing of high voltage transmission lines.⁹²

First, Ms. McNamara raises a concern that comments on Large Energy Wind Conversion Systems (LWECS) at PPSA hearings “have been unlawfully excluded or separated to one side.”⁹³ She states that the 2017 and 2018 notices were incorrect.⁹⁴ Ms. McNamara acknowledges that the 2019 notice “looked correct but for now over ten years the public comments on ‘matters related to siting and routing of large energy facilities’” was not to include wind projects, as was made clear each year.⁹⁵ Ms. McNamara cites language in Minn. Stat. §§ 216F.02 and 216E.03, along with other statutory provisions.⁹⁶ She alleges that “issues, concerns, [and] recommendations” have been blocked and urges the Administrative Law Judge to review testimony from the last ten years of PPSA hearings to further address this concern.⁹⁷

Second, Ms. McNamara expresses concern that wind companies are switching out current wind turbines for larger ones in many LWECS projects without a re-application or review process.⁹⁸ She is troubled by a lack of transparency in the process and feels that the various impacts of these larger wind turbines are not being adequately evaluated.⁹⁹ Ms. McNamara references Minn. Stat. § 216E.08 as support for increased public participation.¹⁰⁰ Ms. McNamara recommends that the Commission allow for more public participation in changes to wind project applications or permits that modify a wind project by switching to bigger turbines.¹⁰¹

Third, Ms. McNamara asserts that LWECS applications require decommissioning plans but these are not being included for public review.¹⁰² As a result, Ms. McNamara states that “[t]his eliminates any opportunity for the public and the local community to study, assess, and insure impacts for the tax payer are minimized by this industry.”¹⁰³ Ms. McNamara points to recent press on decommissioning costs and includes news articles from Falmouth, Massachusetts on the disposition of two wind turbines.¹⁰⁴ Further, Ms. McNamara comments that applications for wind projects omit decommissioning

⁹⁰ Comment by Marie McNamara (Dec. 6, 2019) (eDocket No. 201912-158098-01).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

plans.¹⁰⁵ She alleges that permit applicants in wind projects make false statements outside of public view in private meetings.¹⁰⁶ Ms. McNamara asserts that the Commission fails to enforce or penalize applicants under Minn. Stat. § 216E.17.¹⁰⁷

Fourth, Ms. McNamara contends that the current project complaint process is ineffective and that LWECS project managers either minimize, ignore, or respond to complaints with “useless, trivial mediation plans that do not work.”¹⁰⁸ She argues that the Commission does not follow its rules or step in to help resolve issues.¹⁰⁹

Ms. McNamara asserts that the most common complaints involve noise and “shadow flicker.”¹¹⁰ She notes that state noise standards do not apply to large wind turbines that produce low frequency noise.¹¹¹ She asserts that the “small project standard for 25 MW and under” is misused.¹¹² Ms. McNamara cites concerns with trespassing, nuisance, and health issues as a result of noise and shadow flicker.¹¹³ Ms. McNamara is concerned with the lasting impact on people’s health and property once a wind project is in place.¹¹⁴ She feels that the Commission does not adequately step in to resolve complaints and that the mandatory complaint log process lacks transparency.¹¹⁵ Ms. McNamara ends her comments with a concern regarding waste disposal in wind projects, specifically wind turbine blades.¹¹⁶

4. Written Comments from Kristi Rosenquist

Kristi Rosenquist commented on wind energy projects.¹¹⁷ Ms. Rosenquist noted that she debated submitting comments this year because she has submitted comments in previous years, which she felt the Commission ignored.¹¹⁸

Ms. Rosenquist urged the Commission to set wind siting standards through rulemaking, asserting that the Commission issues site permits without environmental assessment using wind industry set standards.¹¹⁹ As a result, Ms. Rosenquist believes that the Commission fails to protect the health, safety and welfare of the public.¹²⁰ She also reports that wind developers manipulate residents to sign predatory contracts surrendering their property rights and other legal rights.¹²¹

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Comment by Kristi Rosenquist (Dec. 6, 2019) (eDocket No. 201912-158097-01).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

Ms. Rosenquist further asserts that the Department of Commerce is not operating as a neutral factfinder and does not advocate on behalf of the public interest.¹²² She comments that the Department clarified in the 2018 Freeborn wind project that the MPCA's state noise standard applies to all noise sources.¹²³ However, Ms. Rosenquist contends that due to outcry from the wind industry, the Department or the Commission, acting with the MPCA, avoided the application of those standards.¹²⁴ Ms. Rosenquist views the Department as accommodating the wind industry's interests, particularly in terms of low frequency noise and its impact on human health.¹²⁵

Ms. Rosenquist questions why the Commission does not follow the advice of the Minnesota Department of Health (MDH) and the MPCA, asserting that MDH found that low frequency noise from wind turbines "is consistently associated with sleep deprivation, migraine headache, vertigo and tinnitus."¹²⁶ Further, Ms. Rosenquist states that the MPCA will not conduct rulemaking on wind turbine noise due to the lack of information.¹²⁷ She points to the Commission's references to Minn. R. 7030 despite the fact that the MPCA stated this rule "is not for turbines, doesn't work for turbines and shouldn't be used for turbines as the sole factor governing the minimum setback between a home and a turbine."¹²⁸ Ms. Rosenquist provides references to various sources that describe harm from wind turbines.¹²⁹

Like other commenters, Ms. Rosenquist expressed concern over the complaint process, stating that it is illogical that the wind companies have control over the procedure, noting that "[p]redatory wind companies want to avoid any legal liability for destroying human health and the livability of homes."¹³⁰ She is aware of only two complaints that were "truly resolved."¹³¹ Ms. Rosenquist also cites examples of homeowners who have been forced to sell their homes at a financial loss.¹³²

Ms. Rosenquist contends that Xcel Energy exerted control and influence over the University of Minnesota's study on wind turbine low frequency noise.¹³³ She asserts that the University hired a "known wind industry consultant and advocate" to review the study's low frequency noise data and that the University failed to study the issue at the claimed source.¹³⁴

Ms. Rosenquist believes that the Commission should develop a noise standard for turbines if it chooses to site turbines based on noise.¹³⁵ She cited MPCA's statements on

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

the use of its noise standard.¹³⁶ Ms. Rosenquist asserts that in the Freeborn wind docket, the MPCA, the Department, and the Commission failed to consider the advice of acoustician Robert Rand and that the Commission “knows, or should know, that ongoing environmental exposure to audible noise above 40 dB is harmful to human health.”¹³⁷ Ms. Rosenquist urges the Commission to discontinue the issuance of wind turbine permits that produce low frequency noise in the “nauseogenic range.”¹³⁸

Ms. Rosenquist disputes that no peer-reviewed studies exist that show the harmful effects of wind turbines.¹³⁹ She points to PUC Docket No. 09-845, which she asserts contains several peer-reviewed studies and professional journal articles on the impacts, in addition to multiple formal complaints, comments, and testimony at hearings on wind turbine harm.¹⁴⁰ Ms. Rosenquist believes that the Commission fails to adequately protect rural residents.¹⁴¹ She cites additional information from WHO guidelines for the European region.¹⁴²

Ms. Rosenquist encourages the Commission to discontinue issuance of wind turbine permits to be placed at a distance less than the manufacturer-recommended safety evacuation zone.¹⁴³ She cites an unsafe ice shed incident that occurred near Hartland, Minnesota in 2018 that impacted a semi-truck traveling on Highway 13.¹⁴⁴ She states that MnDOT regularly handles wind companies as utilities even though that is not how these companies are classified under statute.¹⁴⁵

Ms. Rosenquist feels that the Commission should not issue site permits to applicants where the public has shown that the applicant is dishonest.¹⁴⁶ In addition, Ms. Rosenquist mentions that she discussed her concerns about the PUC’s public participation process with state Legislative Auditor staff.¹⁴⁷

5. Written Comments from Carol Overland

Carol Overland is an attorney with Legalectric, Inc.¹⁴⁸ Ms. Overland’s comments covered a variety of topics for the Commission to consider. She also provides extensive documentation in support of her comments.¹⁴⁹ She notes that she has participated in PPSA hearings for more than 20 years in the areas of nuclear waste, transmission lines, coal gasification, natural gas, and wind.¹⁵⁰ Ms. Overland is encouraged that the

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Comment by Carol Overland (Dec. 6, 2019) (eDocket No. 201912-158096-01).

¹⁴⁹ *Id.*; Comment by Carol Overland (Dec. 6, 2019) (eDocket No. 201912-158096-02) (containing various exhibits and attachments).

¹⁵⁰ Comment by Carol Overland (Dec. 6, 2019) (eDocket No. 201912-158096-01).

Commission has started to integrate certain PPSA statutes into wind proceedings and she urged the Commission to continue this work.¹⁵¹

Ms. Overland laments that the PPSA proceeding process is more formal than it was in the past, and is concerned that the Commission does not review or recognize the issues raised.¹⁵² She notes the recent Office of the Legislative Auditor's review of the Commission's public participation process.¹⁵³ Ms. Overland views this as an institutional issue versus an issue solely impacting the pipeline review process.¹⁵⁴ Since one of the PPSA's primary purposes is public participation, Ms. Overland requests that the Administrative Law Judge incorporate the Legislative Auditor's report into the PPSA record.¹⁵⁵

Ms. Overland asserts that the PPSA applies to wind projects despite DOC EERA's statements to the contrary.¹⁵⁶ She comments that Minn. Stat. § 216E.03, subd. 7 and Minn. R. 7850 are not wind specific but notes that the wind rules in Minn. R. 7854 contain no siting criteria at all.¹⁵⁷ Ms. Overland references the Freeborn wind case as the first docket to recognize the application of Minn. Stat. § 216E.03, subd. 7 to wind projects.¹⁵⁸ Ms. Overland supports this approach for future wind siting dockets, along with the creation of an Advisory Task Force pursuant to Minn. Stat. § 216E.08.¹⁵⁹ Additionally, Ms. Overland raises concerns with the hearing procedure and the swearing in of witnesses in contested cases.¹⁶⁰

Ms. Overland expressed dissatisfaction with the DOC EERA's work group for solar siting based on her previous experience with the development of wind standards.¹⁶¹ She has made multiple requests to the Commission to initiate rulemaking for large wind projects and states that the Commission has repeatedly denied her petitions.¹⁶² She believes that wind siting rules are long overdue in Minnesota given the amount of time that wind power has existed and that systemic concerns should be addressed in rulemaking.¹⁶³

Ms. Overland comments on the Biennial Report requirement outlined in Minn. Stat. § 216E.18.¹⁶⁴ She states that this report is a valuable aspect of the PPSA because it provides general notice of transmission projects.¹⁶⁵ However, she feels that this report has less impact now, which will lead to decreased community awareness of the

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

Commission's proposed projects.¹⁶⁶ She notes that attendance at these meetings dropped over time, "much like the PPSA hearing this year."¹⁶⁷

Ms. Overland offers various comments on the ways in which the Commission's actions influence public participation. For example, she points to the compartmentalization of the integrated distribution plan and hosting capacity report and the non-public categorization of much of the hosting capacity report.¹⁶⁸ She believes the Commission should include demand forecasts in the Biennial Transmission plan and increase the disclosure of projects in the planning stages.¹⁶⁹

Ms. Overland provides additional comments on the Freeborn wind project, observing that it was the first contested case for wind siting.¹⁷⁰ She believes that wind developers are promoting the wrong ground factor for modeling.¹⁷¹ Ms. Overland asserts that the wind industry improperly uses a "0.5" or "0.7" ground factor instead of a "0.0" ground factor.¹⁷² Because wind turbines are elevated, Ms. Overland explains that sound moves directly to the receptor on the ground (in this case, residential homes).¹⁷³ As a result, Ms. Overland states that ground conditions do not impact the noise source and the receptor; therefore, the ground factor should be "0.0."¹⁷⁴

According to Ms. Overland, DOC EERA projects in the permitting process demonstrate a "disturbing trend" due to the continued use of 0.5 or 0.7 ground factors.¹⁷⁵ Ms. Overland feels that the noise modeling studies for listed projects are "false and misleading" and that wind developers deceptively attempt to meet state noise standards using these incorrect ground factors.¹⁷⁶ Ms. Overland asserts that the Commission fails to properly address compliance with state noise standards and that it is cost-prohibitive for the public to properly intervene.¹⁷⁷ Lastly, Ms. Overland expresses concern about the complaint process.¹⁷⁸

In a subsequent letter and exhibits, Ms. Overland expressed concerns about the DOC EERA 2019 Project Status update at the PPSA hearing, specifically the use of "Trade Secret" for two projects' noise studies (Plum Creek and Blazing Star).¹⁷⁹ She comments that the project filings were designated "Trade Secret" with redaction of the sound power level maximums of the turbines.¹⁸⁰ She states that it is difficult to tell what

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*


¹⁷⁹ Comment by Carol Overland (Dec. 16, 2019) (eDocket No. 201912-158326-01); Overland Exhibit A (Dec. 16, 2019) (eDocket No. 201912-158326-04); Overland Exhibit B (Dec. 16, 2019) (eDocket No. 201912-158326-07); Overland Exhibit C (Dec. 16, 2019) (eDocket No. 201912-158326-10); Overland Exhibit D (Dec. 16, 2019) (eDocket No. 201912-158326-13).

¹⁸⁰ Comment by Carol Overland (Dec. 16, 2019) (eDocket No. 201912-158326-01).

type of information was redacted because the documents do not indicate where trade secret information begins or ends.¹⁸¹ She asks if the Commission's "Revised Procedures for Handling Trade Secret and Privileged Data," dated September 1, 1999, is the most recent guidance on this topic.¹⁸² Ms. Overland disputes the use of the "trade secret" designation in both dockets, highlighting that most information about wind turbine noise maximum levels is public since it is available in sales brochures and technical documents.¹⁸³ Ms. Overland is concerned about the effect on public participation with the use of redacted documents and missing information.¹⁸⁴ She also briefly discusses the use of the "0.7" ground factor for both dockets.¹⁸⁵ She requests that the Commission remove the classification and redaction of the maximum wind turbine noise data as "Trade Secret" and make this information public.¹⁸⁶

On December 18, 2019, Ms. Overland submitted comments and multiple attachments that addressed the use of improper ground factors for all thirteen projects that DOC EERA identified in its EERA 2019 Project Status handout for the PPSA hearing as "LWECS In Permitting Process" or "LWECS Permitted."¹⁸⁷ She expresses dismay in the use of the "0.5" and "0.7" ground factor for these listed projects and reiterates her concerns in the form of a summary of her previous comments on this topic.¹⁸⁸ In conclusion, Ms. Overland emphasized that "[t]he Commission must not site non-compliant projects, must require demonstration of probable compliance, and must use precautionary and preventative siting to avoid impacts and consequences."¹⁸⁹

Dated: February 25, 2020


BARBARA J. CASE
Administrative Law Judge

Reported: Transcribed (Shaddix & Associates)

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Comment by Carol Overland (Dec. 18, 2019) (eDocket No. 201912-158454-10).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

February 25, 2020

Re: *In the Matter of the 2019 Annual Power Plant Siting Act Hearing*

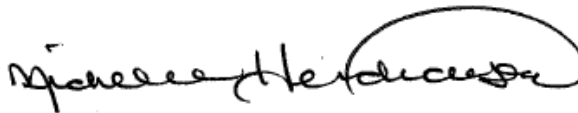
**OAH 82-2500-36333
MPUC E99/PR-19-18**

To All Interested Parties:

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 me at (651) 361-7896, Michelle.L.Hendrickson@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



MICHELLE HENDRICKSON
Legal Assistant

Enclosure

cc: Docket Coordinator