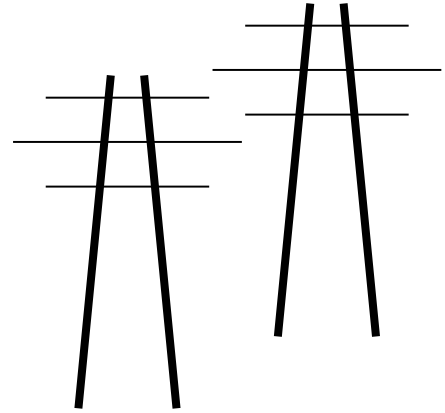


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May 24, 2022

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

via eDockets

Suzanne Steinhauer
Environmental Review Manager
Dept. of Commerce - EERA
85 – 7th Place East, Suite 280
St. Paul, MN 55101

RE: Comment Request for Referral for Contested Case and Advisory Task Force
PUC Dockets: IP-6981/CN-20-865; IP-6981/WS-20-866; IP-6981/TA-20-867

Dear Mr. Seuffert and Ms. Steinhauer:

Thank you for the opportunity to comment on the scope of the Environmental Assessment and the Draft Site Permit.

The Dodge County Wind 2 application is different in many respects from the withdrawn Dodge County Wind project applied for in 2018. DCW planned to “develop, construct, own, and operate” the initial Project, and there was no disclosure of a PPA, and now DCW does have a PPA with GRE. The transmission voltage has dropped from 345kV to 161kV. The project itself has been upsized, the DCW2 is 89 megawatts larger than the initial proposal. The initial DCW was 52,085 acres (81.4 square miles), and the current project encompasses roughly half that, 28,348 acres (44.3 square miles). There are nine more turbines (79 v. 70) and the turbines for the new project are significantly larger, 68 of them 3.4 MW and 11 2.52 MW v. 62 2.5 MW and 8 1.715 MW. This larger project deserves a higher level of scrutiny.

FULL DISCLOSURE: I am filing this comment as an individual, one with considerable experience with need, wind, and transmission dockets at the PUC, and am not representing any party. I do not have a dog in this docket. I represented a party in the earlier Dodge County Wind transmission line proceeding (IP-6981/TL-17-308), and those three dockets comprising that Dodge County Wind proposal were withdrawn. See PUC Dockets IP-6981/CN-17-306, IP-6981/WS-17-307, and IP-6981/TL-17-308.

First, the Commission should authorize an Advisory Task Force, a la Minn. Stat. §216E.08, Subd. 1. This chapter is expressly applicable, and not exempted, under Minn. Stat. §216F.02.

Second, each of these dockets presents questions and issues of material fact, and a contested case is needed to inform the record and resolve these issues. In April, I filed comments regarding the unsupportable Commission action of both deciding that the project's three dockets should receive only "informal review," and that this decision was made via a consent agenda, without notice to enable anyone to weigh in on this decision. Once more with feeling, regarding whether the certificate of need application, the LWECS site permit application, and the HTVL application be referred to the Office of Administrative Hearings (OAH) for contested case proceedings, I urge the Commission to refer each of the three Dodge County Wind dockets to the Office of Administrative Hearing for a contested case proceeding, jointly or separately.

Yes. Just do it. Each of the three dockets have material issues of fact that demand a solid record be built to result in a supportable decision.

Examples of the issues presenting in each docket:

Certificate of Need – Docket CN-20-865

Material issues of fact that should be addressed in a contested case include, but are not limited to:

- NextEra's claim of exemptions "based on DCW's status as IPP." CoN App. P. 4. As a "site/acquire" project, DCW should not be exempted. DCW has a Power Purchase Agreement with GRE, and GRE does have that information required and necessary in a CoN application, and it should be provided to review the need for this project.
- DCW claims that "[t]he project is needed to assist GRE in maintaining RES compliance," noting that "GRE met the 25% RES requirement 8 years early." CoN App. p. 5. Logically, the project is not therefore needed to meet RES requirements.
- DCW further claims that "[t]he project is needed to" ... "reduce statewide greenhouse gas emissions across all sectors producing those emissions to a level at least 15 percent below 2005 levels by 2050." CoN App. p. 5. Building a wind project does not reduce greenhouse gas emissions. The project does not specify how this project would defy the laws of physics – the project does not propose shutting down any fossil or carbon emitting generation that would reduce emissions. Further, GRE had pledged to shut down Coal Creek, which would reduce emissions, but instead, reneged on that promise and instead sold it and signed a PPA for some of the generation!
- DCW claims that the project will help GRE to "(3) meet its energy demands." CoN App. p. 5. There is no information supporting this claim, and no information in the record regarding the project helping GRE meet its energy demands. DCW was specifically exempted from providing information regarding promotional activities, peak demand and annual consumption forecasts, system capacity, consequences of delay, and the alternative of no facility. The record must be developed regarding GRE's energy demands.

- DCW claims that the project will help GRE “(4) meet its commitment to reducing carbon emissions affordably and reliably.” CoN App. p. 5. As above, there is no information supporting this claim, and no information in the record regarding the project helping GRE reduce carbon emissions affordably and reliably. DCW was specifically exempted from providing information regarding promotional activities, peak demand and annual consumption forecasts, system capacity, consequences of delay, and the alternative of no facility. The record must be developed regarding GRE’s energy demands.
- DCW claims exemption from addressing promotional activities, “conditioned on GRE providing equivalent data on its promotional activities.” CoN App. p. 5. Then there’s the claim that GRE has conducted no promotional activities associated with the project. Id. The very claims made on this page of the application are a demonstration of promotional activity.
- DCW claims indirect inducement of development, however the record reflects only “benefits” in vague terms, and does not address costs. CoN App. p. 6, et seq. There will be costs, including but not limited to costs to house workers and provide services; there will be costs to local governments regarding road use and construction; there will be costs to landowners expected including costs associated with construction road blockage and noise, and post-construction shadow flicker and noise mitigation (costs also apportioned in part or full to project); cost of time for local governments to address issues of project and their legal representation, etc. There are two sides to inducing development.
- Are claims that energy generated will be used in Minnesota credible, particularly considering typical powerflows to the east and south.
- Are claims that energy generated will be used in Minnesota consistent with touting that project will be part of regional grid.
- Size, type, and timing are criteria for the Commission’s CoN decision. Are DCW’s statements requesting exemptions, Commission exemption, and resulting lack of information, and DCW’s claims of claims regarding GRE’s “stated needs” and advancement of clean energy goals credible.
- Overall state electricity demand has declined and not yet reached the 2006 peak. GRE’s system information, and the overall Minnesota energy demand is not part of the record. Is the energy of this project needed?
- DCW claims that the project is consistent with “Minnesota Energy Policy.” Again, how does a wind project reduce greenhouse gas emissions.
- Is DCW’s claim that the project reduces emissions based on an increase in generation MW/all generation, thereby reducing “carbon intensity” by reducing the percentage of all generation with CO2 emissions, rather than reducing actual emissions.?

- Transmission planning compliance is required, and because GRE is a major transmission owner, details must be disclosed in light of GRE's PPA for this generation.

Wind Siting – Docket WS-20-866

Material issues of fact that should be addressed in a contested case include, but are not limited to:

- This is LARGE Wind Energy Conversion System (LWECS) sited using small wind standards (Order Establishing General Wind Permit Standards, Docket No. E, G999/M-07-1102 (MPUC 2008) — small wind standards are not applicable to a LWECS project.
- More and larger turbines on less land is indicative of a higher density project with greater impacts.
- Does DCW have all necessary land rights? turbines (“targeted, pending, no status, and not interested” do not count, only leased.) It appears that land rights are needed for at least 14 turbines.
- Is there a legally sufficient basis for differing siting standards and setbacks for participants and non-participants.
- Most wind projects miss identifying “receptor” homes in the project footprint — are all the homes (“receptors”) identified on the map and considered in siting.
- Are all wetlands, calcareous fens, sloughs, and flood areas accurately mapped and impacts considered.
- Are the maps sufficiently detailed to accurately depict the 3×5 and 5×5 rotor setbacks.
- Are impacts of blinking red lights considered.
- Is the use of new motion detection lighting system approved and is FAA applications for this system and for all turbine lighting in the application.
- What are impacts on nearby Rice Lake State Park and other state land, conservation easements, and waters.
- NextEra has been fined by USFWS and is “on probation” for killing at least 150 bald eagles. Is NextEra’s eagle survey and Avian and Bat Protection Plan sufficient.
- Should an eagle take permit be required. USFWS does not “require” them but instead makes a recommendation. Based on NextEra history, should the Commission also recommend an eagle take permit.
- Is noise modeling predictive of ability to comply with noise standards, or is there a

likelihood of a discrepancy between pre-construction noise modeling and post-construction noise monitoring, as has been found in other wind projects.

- Ground attenuation used in modeling for the initial DCW project was 0.5, and was changed to usage of correct 0.0 input for the DCW2 noise modeling. Projects using 0.5 for modeling and basing siting on that have had noise issues – Freeborn, Big Blue, Blazing Star and probably others. Much smaller turbines sited before noise modeling was required have experienced noise exceedences and landowner buyouts. Use of this 0.0 ground factor is much appreciated and increases credibility of DCW’s noise modeling.
 - What was basis for that change.
 - How did the change affect siting.
 - That the applicant used the correct ground attenuation factor of 0.0, recognized that it should be used, is something that the Commission and Commerce-EERA should also heed, and recognize and utilize 0.0 ground factor to prevent continued noise exceedences issues. The Commission must prohibit use of the improper 0.5 ground attenuation factor and the even more absurd ground factor of 0.7 used by some applicants.

- Will unreasonable shadow flicker be inflicted on area residents.
- What is DCW’s basis for evaluation of “acceptable” shadow flicker.
- If shadow flicker is problematic, what mitigation is proposed, and is it effective.
- Is this the highest and best use for agricultural land.
- Does siting utility scale central station wind turbines comply with county and township land use plans.
- Is a change in zoning required for county and/or township siting.
- Is there a binding road use agreement with each township and county.
- Are all airports identified, including private airports for spraying, and are impacts considered.
- Are the impacts, risks, and costs of the turbines on aerial crop and insect spraying, medical, and hazmat helicopter flights , and pilots of these flights, identified and considered.
- Are participating and non-participating landowners regarded equally in siting and modeling impacts and avoidance.

- Does the decommissioning plan sufficiently protect landowners from the express potential of transfer of the burden of decommissioning and cost recovery in the event of operator’s failure to decommission, bankruptcy, and/or abandonment of the project.

Transmission – Docket TL-20-867

Material issues of fact that should be addressed in a contested case include, but are not limited to:

- Is the alternative siting process sufficient for a contested transmission project. Under Minn. Stat. § 216E.04, subd. 2(3), or is a more robust review required.
- Does the project have land rights sufficient to route the transmission.
- Is the project relying on the stale AG Opinion to Dodge County regarding private corporations and transmission Rights of Way.
- Are easements for transmission available to a private developer and private corporation? For example, EERA Comments of February 7, 2022 state:

EERA believes it is important to note that locating HVTL structures within public road ROW, while not unprecedented, is not routine in transmission permits before the Commission. In transmission route applications previously before the Commission, applicants have often preferred to keep the transmission structures on private land rather than road ROW to avoid the risk associated with relocation costs if the road is expanded (if the structures are located outside of the ROW, the ROW owner is responsible for costs associated with the relocation of transmission structures). EERA is aware of a handful of exceptions to this generality in proceedings before the Commission:

... and:

EERA believes siting a 27-mile transmission line within public road ROW may set a precedent for future independent power producers seeking to connect new generation to the electric grid as coordinating with a relatively small number of local governments is presumably more efficient and less costly than negotiating easements with dozens or perhaps hundreds of landowners. Because of the potential for setting precedent, EERA is concerned with ensuring adequate record development around this issue.

In addition to potential to set precedent, the particular route proposal seeks to place the transmission line within a very narrow road ROW. The proposed route would locate approximately 14 miles of the anticipated alignment (approximately 52 percent of the project length) within a 66-foot road ROW.⁴¹ It is unclear at this time whether the proposed transmission line can be located safely within county road ROW in a manner that does not interfere with the safety and convenience of ordinary travel.

EERA, the Commission’s project “staff” raises these issues, and the Commission doesn’t seem to pay attention. Public commentators raised similar issues, and objections to both the wind project and transmission.

- Does the project have all land rights for transmission. This is a private company with no right of eminent domain.

- Are all wetlands, calcareous fens, sloughs, and flood areas accurately mapped and impacts considered.
- Are all existing transmission and distribution lines identified, mapped, and considered for use for this project.
- Has uprating and/or upgrading existing transmission been considered as an alternative to the 161kV line.
- Storage is now regarded as an alternative for transmission. Has use of storage rather than transmission been evaluated.

These are some issues to be addressed in scoping and in review of these three applications. Above and beyond these issues are the need for an Advisory Task Force to assist in identifying and reviewing environmental issues and impacts, and the necessity of referral to the Office of Administrative Hearings for a contested case due to the strongly contested nature of the project and the specific issues of material fact, about which the record must be developed in order to result in a credible and supported decision by the Commission.

Thank you for the opportunity to submit these comments.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law