

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

In the Matter of the Annual Power Plant
Siting Act Hearing (2021)

REPORT TO THE COMMISSION

On or about September 28, 2021, the Minnesota Public Utilities Commission (PUC or Commission) requested that the Office of Administrative Hearings conduct, on its behalf, the 2021 Annual Hearing on Power Plant Siting and Transmission Lines Routing Programs, pursuant to Minn. Stat. § 216E.07 (2020) and Minn. R. 7850.5400 (2021). Administrative Law Judge Ann C. O'Reilly was assigned to preside over the public hearing.

The public hearing commenced at 9:30 a.m. on December 20, 2021, both in person and using the Cisco WebEx teleconferencing platform. This alternative platform was made available because of the COVID-19 pandemic and pursuant to related state regulations involving in-person public hearings. The hearing record closed at 4:30 p.m. on January 10, 2021, at the end of the published public comment period.¹

The Annual Hearing has two key purposes. First, it is meant to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines. Second, it affords interested persons an opportunity to be heard regarding the Commission's activities, duties, and policies pursuant to the Power Plant Siting Act (PPSA).²

I. Notice of Annual Hearing

Minnesota Statutes section 216E.07 and Minnesota Rules part 7850.5400 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.³ 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.⁴ The hearing notice must be mailed to or served electronically on those persons who have requested notice,

¹ See Exhibit (Ex.) 1 (Notice of Power Plant Siting Act Annual Hearing, (Nov. 30, 2021) (eDocket No. 202111-180224-32).

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

³ Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 1.

⁴ Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2.

and must be published in *Environmental Quality Board (EQB) Monitor* and on the Commission's calendar.⁵

On November 30, 2020, the Commission served, by U.S. Mail or electronic mail,⁶ the Notice of the Power Plant Siting and Transmission Line Routing Program Annual Hearing (Notice of Hearing) on those persons who requested notice.⁷ The Notice of Hearing contained a tentative agenda for the hearing, as required by Minn. R. 7850.5400.⁸ On November 30, 2021, the *EQB Monitor* (an electronic newsletter issued by the Environmental Quality Board) published the Notice of Hearing.⁹ The Commission also posted the Notice of Hearing on the Commission's web calendar throughout the notice and public comment periods.¹⁰

Representatives from the Commission, Minnesota Department of Commerce (DOC), Department of Natural Resources (DNR), and Minnesota Department of Transportation (MnDOT) attended the hearing and gave presentations. Only one member of the public attended the hearing.¹¹ That individual offered oral comments during the hearing and filed the sole written comment received.¹² Her comments are summarized below.

II. Introductions and Agency Presentations

A. Scott Ek, Public Utilities Commission

Scott Ek, a staff member of the PUC, explained that the PUC is the state agency regulating electric, gas, and telephone utilities in Minnesota.¹³ The PUC's mission is to create and maintain a regulatory environment that ensures safe, adequate, and efficient utility services at fair and reasonable rates consistent with state policy.¹⁴ The PUC provides independent oversight and regulation of utility service providers consistent with the public interest.¹⁵

Mr. Ek explained that, under Minnesota Statutes chapter 216E, the PUC has authority over the siting of large electric power generating plants and routing of high

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

⁶ Minn. Stat. § 216.17, subd. 2 (2020) permits service of notices by electronic mail.

⁷ See Ex. 1 at Certificate of Service and Service List (Nov. 30, 2021) (eDocket No. 202111-180224-32).

⁸ Ex. 1 (Notice of Power Plant Siting Act Annual Hearing, (Nov. 30, 2021) (eDocket No. 202111-180224-32).

⁹ Ex. 2 (*Minnesota Environmental Quality Board Monitor*, Vol. 45, No. 48 (Nov. 30, 2021) (eDocket No. 202111-180240-01).

¹⁰ See Public Utilities Commission Calendar, www.trumba.com/calendars/mn-puc (last visited on Dec. 21, 2020).

¹¹ Due to the virtual nature of the hearing this year, there was no sign-in sheet to document those attending who did not speak. Carol Overland was the sole member of the public who appeared.

¹² Public Hearing Transcript (Hearing Tr.) at 40-53 (Dec. 20, 2021); Written comment by Carol Overland, Legalectric, Inc. (Jan. 10, 2022) (eDocket No. 202111-181357-01) (Overland Comment).

¹³ Hearing Tr. at 20.

¹⁴ *Id.*

¹⁵ *Id.*

voltage transmission lines; it is the PUC's policy to locate large energy facilities and high voltage transmission lines in an orderly manner compatible with the efficient use of resources and environmental preservation.¹⁶ The PUC selects facility locations that minimize adverse impacts while ensuring that energy needs are met in a reliable, orderly, and timely manner.¹⁷

Mr. Ek explained that the annual public hearing is held pursuant to chapter 216E 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.¹⁸ The public hearing also provides an opportunity for the PUC to advise the public of the permits issued in the past year for such facilities.¹⁹

Mr. Ek deferred to the DOC to summarize the projects reviewed and permits issued by the Commission and DOC in 2021.²⁰

B. Louise Miltich, Department of Commerce

Louise Miltich is with the Energy Environmental Review and Analysis (EERA) unit at the DOC.²¹ She explained that the EERA conducts environmental review and technical assistance to the Commission for energy facilities in Minnesota, including those proposed under the PPSA, the Large Wind Energy Conversion Systems (LWECS) statute, and the pipeline siting statute.²² The EERA also conducts compliance reviews of pre-construction, pre-operation, and in-service projects.²³

Ms. Miltich identified special initiatives undertaken by the EERA during 2021. One such initiative is convening an interagency working group on vegetation management plans, which help mitigate the environmental impact of power infrastructure.²⁴ The working group includes EERA, DNR, the Department of Agriculture, the Board of Water and Soil Resources, and the MPCA.²⁵ The group published a vegetation management planning guide in March 2021 to summarize state agency resources for beneficial habitat planning around solar and other power infrastructure.²⁶

In addition, the EERA has continued an ongoing evaluation process regarding the decommissioning of renewable energy facilities.²⁷ Ms. Miltich explained that the EERA anticipates finalizing guidelines on its review of applications in late 2021 or early 2022, and that, consistent with these efforts, applications for new and repowered facilities

¹⁶ *Id.* at 20-21.

¹⁷ *Id.* at 21.

¹⁸ *Id.* at 21-22.

¹⁹ *Id.* at 22.

²⁰ *Id.*

²¹ *Id.* at 22.

²² *Id.* at 22-23.

²³ *Id.* at 23.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 23-24.

²⁷ *Id.* at 24-25.

contain draft decommissioning plans.²⁸ The EERA reviewed decommissioning plans for 11 new, repowered, or existing wind projects in 2021, and anticipates reviewing an additional 20 projects in 2021.²⁹

A third EERA initiative in 2021 involved the Landowner Choice Program, which allows landowners along the existing Line 3 to choose either removal or decommissioning in place of the discontinued line.³⁰ The program includes an independent liaison to ensure requirements are met and that landowners have access to independent third-party engineering consultation at the expense of Enbridge Energy.³¹ At the direction of the PUC, EERA staff are performing the independent liaison function under the program.³² EERA has engaged and directed the expertise of the third-party engineer as appropriate to provide technical assistance.³³

A fourth EERA initiative focused on continuing to foster coordination with Minnesota's Indigenous tribes.³⁴ The EERA seeks to build relationships between tribal staff and EERA project managers.³⁵ In that spirit, the EERA has continued to work with tribes to develop new content on its website to include "story maps" that are intended to educate applicants and others on tribes in Minnesota.³⁶

Finally, Ms. Miltich provided an overview of EERA's work on projects in 2021, including permits that were issued, environmental reviews that were completed, and projects and environmental reviews in progress in 2021.³⁷ With respect to permits issued in 2021, Ms. Miltich identified five transmission lines permitted under Minn. Stat. ch. 216E, five LWECS permitted under Minn. Stat. ch. 215F, and one gas pipeline permitted under Minn. Stat. ch. 215G.³⁸ The EERA also completed two environmental assessments, one environmental impact statement, and one environmental report in 2021.³⁹

As for permits in process in 2021, Ms. Miltich identified ten transmission line and large energy generation projects, five LWECS, and one pipeline project in the permitting process in 2021.⁴⁰ In addition, the EERA currently has seven environmental assessments and two environment impact statements in development.⁴¹

²⁸ *Id.* at 25.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 25-26.

³⁴ *Id.* at 26.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 26-27.

³⁹ *Id.* at 27-28.

⁴⁰ *Id.* at 28-29.

⁴¹ *Id.* at 29-30.

C. Cynthia Warzecha, Department of Natural Resources

Cynthia Warzecha appeared on behalf of the DNR.⁴² Ms. Warzecha began by explaining the DNR's participation in the process of power plant siting and transmission line routing.⁴³ The DNR has jurisdiction over wildlife and the administration of natural resource-based public lands in Minnesota.⁴⁴ The DNR has the authority to license the crossing of public lands and waters, and to permit the taking of endangered species, work in public waters, and water appropriations.⁴⁵

With respect to the siting and construction of energy facilities, the DNR participates in the PUC's process by providing input on natural resources subjects during early project planning, public comment periods, meetings, and project development and construction.⁴⁶ The DNR encourages early coordination with both the energy companies and other state agencies during the project planning phase; participates in public commentary and meetings during project development; provides technical expertise and data to the Commission (including the environmental impacts associated with projects); and suggests alternative routes for analysis.⁴⁷

Ms. Warzecha noted that the DNR appreciates its coordination with the DOC and Commission in utility project development and permitting.⁴⁸ In 2021, the DNR continued its participation in two agency work groups. The first involves vegetation management guidelines for project developers.⁴⁹ These guidelines reflect a collaboration and collective vegetation management plan review of projects among the DNR, the Board of Soil and Water Resources, and the MDA.⁵⁰ The DNR feels that the collective review process has streamlined work for both the agencies and developers.⁵¹

The DNR also participated in the interagency energy working group led by EERA.⁵² Ms. Warzecha stated that the group continues to be an effective forum to share technical expertise and address challenges related to transmission lines, pipelines, and solar and wind energy.⁵³ In 2021, this group organized several educational opportunities that were extended to other agency staff, including the PUC.⁵⁴

The DNR has been following the rulemaking process for Minnesota Rules chapter 7850 regarding site and route permits for large electric power plants and high voltage

⁴² *Id.* at 31.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 31-32.

⁴⁸ *Id.* at 32.

⁴⁹ *Id.*

⁵⁰ *Id.* at 32.

⁵¹ *Id.*

⁵² *Id.* at 33.

⁵³ *Id.*

⁵⁴ *Id.*

transmission lines.⁵⁵ The DNR appreciates the proposed addition of a constant period for final environmental impact statements and proposed rules regarding when participating agencies may file final comments.⁵⁶

An ongoing concern for the DNR involves wildlife impacts associated with wind energy projects.⁵⁷ Because of the number of new and repowered wind facilities, and based on assessments of post-construction fatality monitoring, cumulative bat fatalities are a serious concern.⁵⁸ The DNR asks that the PUC work with the DNR to minimize the loss of bats associated with wind projects.⁵⁹

D. Stacy Kotch Egstad, Minnesota Department of Transportation

Stacy Kotch Egstad is the utility routing and planning coordinator for MnDOT.⁶⁰ MnDOT's interests in energy projects are to protect current and future trunk highway rights-of-way, protect the public, and ensure safety for MnDOT's construction and maintenance staff.⁶¹

MnDOT review of energy projects has two phases: it involves both pre-PUC-permit- approval review and post-PUC-permit-approval review.⁶² In the pre-PUC-permit-approval process, MnDOT reviews the project and then communicates with the applicant and agency staff, including meeting with the applicant, if necessary, to assist the applicant in meeting all requirements.⁶³ MnDOT also submits comments on the scoping, environmental assessment, draft environmental impact statement, and the final environmental impact statement.⁶⁴

After the PUC approves a project, MnDOT conducts more detailed project review meetings related to MnDOT's rights-of-way.⁶⁵ The agency offers guidance to applicants and issues necessary permits.⁶⁶ In its reviews, MnDOT considers the impacts on the trunk highway system, any secondary effects of the project on Minnesota's transportation system (such as utility accommodations, miscellaneous work, and access), and the permits needed to complete the work.⁶⁷

⁵⁵ *Id.*

⁵⁶ *Id.* at 33-34.

⁵⁷ *Id.* at 34.

⁵⁸ *Id.* at 34-35.

⁵⁹ *Id.* at 35.

⁶⁰ *Id.* at 36.

⁶¹ *Id.*

⁶² *Id.* at 37-38.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 38.

⁶⁶ *Id.*

⁶⁷ *Id.*

In recent years, MnDOT has coordinated its efforts with its internal environmental staff to specifically review work within environmentally sensitive areas.⁶⁸ MnDOT is also coordinating its efforts more with Minnesota's Native tribes.⁶⁹

In 2021, MnDOT issued several utility permits associated with projects in the PUC permitting process.⁷⁰ MnDOT has worked to overcome issues when projects need adjustments to ensure that the projects can be permitted successfully.⁷¹ MnDOT is interested in participating in discussions to reevaluate, update, and expand upon the effects that large energy projects have on the state's trunk highway system.⁷²

III. Summary of Public Comments

Carol Overland of Legalectric, Inc. was the only member of the public to make oral comments at the hearing.⁷³ Ms. Overland was also the only person who submitted written comments.⁷⁴

Ms. Overland stated that she believes it is important for stakeholders to participate in the annual review hearing.⁷⁵ She sends out additional notices to her contacts about the hearing and appreciates that the notice list exceeds what is required by rule.⁷⁶

Ms. Overland raised questions about the working group for renewable decommissioning, stating that she was unaware of the group's existence, and that decommissioning has long been an issue with wind projects.⁷⁷ She stated that developers have been allowed to submit permitting applications without decommissioning plans contrary to rule, which results in a lack of public notice and participation.⁷⁸

Ms. Overland expressed frustration that rulemaking under the Power Plant Siting Act was still proceeding despite being based on changes to legislation from 2005.⁷⁹ She pointed to a recent withdrawal of proposed rules (on power plant siting and transmission lines under chapters 7849 and 7850) as particularly frustrating, especially because she and her client group had put much effort into participating in the rulemaking process to

⁶⁸ *Id.* at 38-39.

⁶⁹ *Id.*

⁷⁰ *Id.* at 39.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 40-53.

⁷⁴ Written comment by Carol Overland, Legalectric, Inc. (Jan. 10, 2022) (eDocket No. 202111-181357-01) ("Overland Comment").

⁷⁵ Tr. at 41.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 41-42.

⁷⁹ *Id.* at 42-44.

that point.⁸⁰ She also questioned why the rulemaking process flowed through a working group that was unknown to her and did not provide opportunity for public participation.⁸¹

Ms. Overland discussed wind projects proceeding under Minnesota Statutes chapters 216E and 216F (2020), specifically pointing to Minn. Stat. §§ 216E.03, subd. 7 (Power Plant Siting Act criteria) and 216E.08 (public participation) as applicable and relevant to wind projects.⁸² Ms. Overland also listed Minn. Stat. §§ 216E.11, .7 .12, .14, .15, .17, and .18 subd. 3 as relevant to wind projects.⁸³

Ms. Overland pointed to the DNR's technical working group as similar to the Environmental Quality Board's "tech reps" from several decades ago, whom she said were very useful and open to the public.⁸⁴

Ms. Overland raised concerns with noise issues from wind projects.⁸⁵ Her concerns included the use of certain ground factors for specific projects, which she believed were inappropriate for use on those projects.⁸⁶

Ms. Overland cited to the ongoing supplemental environmental impact statement regarding the Prairie Island spent fuel storage, stating that there were concerns about cask replacement and relevant PUC statutes and rules.⁸⁷

Ms. Overland concluded by expressing frustration with the lack of public interest in PUC matters.⁸⁸ She attributed the lack of public participation to the obstacles in participating and agencies' slow movement on subjects such as rulemaking.⁸⁹ She was especially frustrated when the PUC withdrew its rules after nine years of hearings and sent them back to the Office of Administrative Hearings.⁹⁰ Her concerns include the fact that agencies have stated that the purpose of the rules is to make the permitting process more efficient, which she equated to "regulatory speak for 'ram projects through'."⁹¹ She is concerned that Xcel Energy is preparing for a buildout of transmission lines without rules in place and highlighted the need for wind-specific rules.⁹²

⁸⁰ *Id.*; see also Overland Comment at 1-4.

⁸¹ Tr. at 42-44.

⁸² *Id.* at 44-45.

⁸³ *Id.*

⁸⁴ *Id.* at 45.

⁸⁵ *Id.* at 45-46.

⁸⁶ *Id.*

⁸⁷ *Id.* at 46.

⁸⁸ *Id.* at 48-51.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

Ms. Overland also raised concerns about difficulties for landowners and residents in the complaint process for noise issues on wind projects.⁹³ She urges the PUC to have the process closely supervised by the EERA, rather than the project owners.⁹⁴

Dated: February 16, 2022

A handwritten signature in black ink, appearing to read 'A. O'Reilly', written over a horizontal line.

ANN C. O'REILLY
Administrative Law Judge

Reported: Transcribed (Shaddix & Associates)

⁹³ *Id.* at 51-52.

⁹⁴ *Id.*

February 16, 2022

See Attached Service List

**Re: *In the Matter of the Power Plant Siting Act Annual Hearing 2021 PUC
Docket Number #21-18***

**OAH 65-2500-37832
MPUC PUC E999/PR-21-18**

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 me at (651) 361-7874, michelle.severson@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



MICHELLE SEVERSON
Legal Assistant

Enclosure

cc: Docket Coordinator

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CERTIFICATE OF SERVICE

In the Matter of the Power Plant Siting Act Annual Hearing 2021 PUC Docket Number #21-18	OAH Docket No.: 65-2500-37832
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Dara Xiong certifies that on February 16, 2022, she served the true and correct
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