

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

In the Matter of the Application for a  
Route Permit for the Noble Flat Hill  
Windpark I, LLC, 230 kV Transmission  
Line Project

**PREHEARING ORDER**

A prehearing conference was held before Beverly Jones Heydinger, Administrative Law Judge, on July 23, 2009, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Appearances:

Matthew B. Seltzer and Brian M. Meloy, Leonard, Street and Deinard, P.A., appeared on behalf Noble Flat Hill Windpark I, LLC (Applicant).

Karen Finstad Hammel, Assistant Attorney General, appeared on behalf of the Department of Commerce, Office of Energy Security, Energy Facility Permitting Staff (Department).

Ray Kirsch, Public Advisor, and David Birkholz, Department of Commerce, Office of Energy Security, were also present.

Commission staff Tricia DeBleekere was also present.

Participating by telephone was potential intervenor Kathleen Stradley.

Discussion was held among the participants concerning the proposed schedule. The Administrative Law Judge makes the following Prehearing Order.

IT IS HEREBY ORDERED:

**Intervention**

1. At this time, the only party to this proceeding is the Applicant. The Department of Commerce, Office of Energy Security, Energy Facility Permitting Staff, has given notice of its intent to participate pursuant to Minn. Stat. § 216E.03.

2. Members of the public need not become formal parties to participate in the hearing. Members of the public may offer either oral or written testimony, and they may offer exhibits for inclusion in the record. But any person desiring to become a formal party must file a petition to intervene.

3. Persons who wish to intervene in this proceeding are requested to file a written petition to intervene with the Administrative Law Judge no later than **August 28, 2009**, as set forth in Minn. R. 1400.6200. Any objections to the petitions shall be filed by **September 8, 2009**. The petition shall be served upon all existing parties and the Commission. A Notice of Appearance shall be filed with the Petition.

### **Schedule**

4. The following schedule is adopted:

Direct Testimony,	<b>September 14, 2009</b>
Rebuttal Testimony	<b>September 28, 2009</b>
List of Proposed Exhibits and Witnesses	<b>October 5, 2009</b>

5. A combined public hearing and evidentiary hearing will be held:

**October 12, 2009** at 1:00 p.m. and 6:00 p.m. in Glyndon, Minnesota.

At the same time, the Administrative Law Judge will take public testimony concerning the Application for the Certificate of Need for the Flat Hill Windpark I LLC windfarm and transmission line, PUC Docket No. IP-6687/CN-08-951. The hearing will continue on October 13, 2009, if necessary.

Public comments may also be submitted to the Administrative Law Judge in writing. Written comments must be received by 4:30 p.m., **October 22, 2009**. Comments may be filed by U.S. Mail, fax or e-mail to [Marybeth.Gossman@state.mn.us](mailto:Marybeth.Gossman@state.mn.us).

6. The parties shall file their post-hearing briefs according the following schedule:

Initial Briefs	<b>October 22, 2009</b>
Reply Briefs	<b>October 29, 2009</b>

### **Deadline for Decision**

The Applicant has agreed to extend the PUC's deadline for decision to **January 14, 2010**.

## **Publication of Hearing Schedule**

7. The staff and the Applicant shall develop a notice of hearing specifying the date, time and location of the hearing, for publication by **September 1, 2009**.

## **Discovery**

8. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail, and the requesting party shall follow the e-mail with a copy of the request sent by regular U.S. mail or other delivery service to all parties. To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Chapter 13, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

9. The party responding to the request shall provide the requested information to the requesting party within ten business days of receipt of the request. A business day does not include weekend days and Minnesota state holidays. In accordance with Minn. R. 1400.6100, subpt. 1, the day that the information request is received is not counted in the ten-day period. If the request is received after 4:30 on a business day, the following business day is also not counted in the calculation of the ten-day response period.

10. Responses to information requests shall be submitted by e-mail, and the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service. To the extent that a response includes material designated as Trade Secret or Nonpublic, an e-mail response is required only between the requesting party and the responding party. Any response received before 4:30 p.m. on a business day is considered to be received on the same day. Any response that is received after 4:30 on a business day is considered to be received the following business day.

11. In the event that due to the volume or nature of information included in a response, the responding party is unable to send the response by e-mail, the responding party shall send the response by facsimile, regular U.S. mail or other delivery service so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize CDs to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

12. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting/responding party, who shall provide the information in that format. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may seek a Protective Order in this matter before providing the information.

13. In the event the information cannot be supplied within ten business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party.

14. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Hearings on such motions may be conducted by telephone conference call.

### **Prefiled Testimony**

15. Prefiled testimony shall be marked as an exhibit and offered for admission into the record at the hearing. A hard copy shall be provided for that purpose and the offering party shall provide the unique E-file identifying number, if any. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered into evidence at the hearing.

16. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

### **Order of Testimony**

17. Unless the parties agree otherwise, the order of testimony shall be: the Applicant, additional intervenors, if any, and the Department. Questioning of the witnesses shall proceed in the same order, subject to change by agreement of the parties or further order of the Administrative Law Judge.

### **Examination of Witnesses**

18. Witnesses shall be allowed ten minutes to summarize their prefiled testimony. For good cause shown, witnesses will be permitted to respond to any new matters not addressed in prefiled testimony through direct examination by counsel.

19. Parties shall examine and cross-examine witnesses through their attorneys, if the parties are represented by counsel. Any party not represented by

counsel may examine and cross-examine each witness through any one representative chosen by the party.

20. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than **October 5, 2009**.

### **Procedure**

21. The rules of the Office of Administrative Hearings and Minn. R. 7849.5010 *et seq.*, govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

### **Filing of Documents (Excluding Information Requests and Responses)**

22. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

23. The parties have agreed to file all documents, including prefiled testimony, using the E-File system of the Public Utilities Commission, the Department and the Office of Administrative Hearings. Such E-filing constitutes filing of the document and service on those offices and upon any other party that has agreed to accept E-filing as service. A document E-filed after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota holiday is considered to be filed on the next business day.

24. The original document and one copy shall be mailed or delivered to the Administrative Law Judge no later than the next business day. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

25. Parties using the E-filing system must retain the unique document identifier as proof of service through that system. Proof of service shall be filed with each document or within three business days thereafter.

26. The service list will be revised as necessary by the Office of Administrative Hearings.

27. If trade secret or nonpublic data is filed with the Administrative Law Judge, it shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures may be viewed at [www.puc.state.mn.us/PUC/consumers/data-practices/index.html](http://www.puc.state.mn.us/PUC/consumers/data-practices/index.html). The party submitting the data may request a Protective Order.

## **Court Reporter**

28. A court reporter will be present at the hearing. Parties must make arrangements with the court reporter to obtain a copy of the transcript.

## **Request for Accommodation**

29. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

## **Subpoenas**

30. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the administrative law judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at [www.oah.state.mn.us](http://www.oah.state.mn.us).

Dated this 28<sup>th</sup> day of July, 2009.

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

**Mailing Address:**  
P.O. Box 64620  
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900  
TTY: (651) 361-7878  
Fax: (651) 361-7936

July 28, 2009

To All Persons on the Service List

**Re: *In the Matter of the Application for a Route Permit for the Noble Flat Hill Windpark I LLC 230 kV Transmission Line Project***  
**OAH No. 15-2500-20657-2**  
**PUC No. IP-6687/TL-08-988**

Dear Parties:

The document listed below has been served as specified on the service list.

**Prehearing Order**

Sincerely,

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Telephone: (651) 361-7838

BJH:nh

Enclosures

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
600 NORTH ROBERT STREET  
PO BOX 64620  
ST. PAUL, MINNESOTA 55164-0620

**CERTIFICATE OF SERVICE**

<b><i>In the Matter of the Application for a Route Permit for the Noble Flat Hill Windpark I LLC 230 kV Transmission Line Project</i></b>	<b>OAH No. 15-2500-20657-2 PUC No. IP-6687/TL-08-988</b>
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Nancy J. Hansen certifies that on the 28th day of July, 2009, she served a true and correct copy of the attached Prehearing Order in the manner indicated below to the following individuals:

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Volha	Andreyeva	volha.andreyeva@leonard.com	Leonard, Street and Deinard	Suite 2300 150 South Fifth Street, Minneapolis, MN- 55402	Electronic Service	No
Mike	Beckner	beckner@noblepower.com	Noble Flat Hill Windpart I, LLC	8 Railroad Avenue, Essex, CT- 6426	Electronic Service	No
Patricia	DeBleeckere	tricia.debleeckere@state.mn.us	MN Public Utilities Commission	Suite 350 121 Seventh Place East: #., St. Paul, MN- 55101	Paper Service	Yes
Sharon	Ferguson	sharon.ferguson@state.mn.us	MN Department Of Commerce	85 7th Place E Ste 500, Saint Paul,	Electronic Service	Yes

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Marybeth	Gossman	marybeth.gossman@state.mn.us		MN-551012198 P.O. Box 64620, Saint Paul, MN-55164	Electronic Service	Yes
Todd J.	Guerrero	tguerrero@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street, Minneapolis, MN-554021425	Electronic Service	No
Burl W.	Haar	burl.haar@state.mn.us	MN Public Utilities Commission	Suite 350 121 7th Place East, St. Paul, MN-551012147	Electronic Service	Yes
Karen Finstad	Hammel	Karen.Hammel@state.mn.us	MN Office Of The Attorney General	Tower 445 Minnesota Street, St. Paul, MN-551012131	Electronic Service	Yes
Beverly	Heydinger	beverly.heydinger@state.mn.us	Office Of Administrative Hearings	PO Box 64620, St. Paul, MN-551640620	Paper Service	Yes
Ray	Kirsch	Raymond.Kirsch@state.mn.us		7th Place East, Suite 500: #., St. Paul, MN-55101	Electronic Service	Yes
John	Lindell	agorud.ecf@state.mn.us	OAG-RUD	900 BRM Tower 445 Minnesota St, St. Paul, MN-551012130	Electronic Service	Yes
Brian	Meloy	brian.meloy@leonard.com	Leonard, Street & Deinard	Suite 2300150 South Fifth Street: #., Minneapolis, MN- 55402	Electronic Service	No
Matthew B.	Seltzer	Matthew.Seltzer@leonard.com	Leonard, Street &	Suite 2300 150 South	Electronic Service	No

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Fifth Street, Minneapolis, MN- 55402 9100 West Bloomington FreewaySuite 122:#, Bloomington, MN- 55431	Electronic Service	Yes

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