

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

In the Matter of the Application of AWA  
Goodhue Wind, LLC, for a Large Wind  
Energy Conversion System Site Permit  
for the 78 MW Goodhue Wind Project in  
Goodhue County

**THIRD PREHEARING ORDER**

On January 10, 2011, the Applicant requested a revision to the prehearing schedule. On January 11, 2011, Goodhue Wind Truth proposed a modification to the Applicant's proposal. Goodhue County and the City of Belle Plaine agreed with the proposed modifications. OES had no objection to the proposal and the remaining parties did not respond or express any objection.

Based upon the files, records, and proceedings herein, it is hereby ORDERED that the schedule is revised as follows:

Applicant's Direct:	January 28, 2011
Intervenor Rebuttal:	February 24, 2011
OES Comments and Applicant's Surrebuttal:	March 4, 2011
Hearing, at the PUC:	March 15-17, 2011
Post-hearing memoranda:	April 1, 2011
ALJ Recommendation:	May 1, 2011

Dated: January 14, 2011

  
KATHLEEN D. SHEEHY  
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

January 14, 2011

To All Parties on the Attached Service List

Re: *In the Matter of the Application of AWA Goodhue Wind, LLC,  
for a Large Wind Energy Conversion System Site Permit for  
the 78 MW Goodhue Wind Project in Goodhue County*  
OAH 3-2500-21662-2; PUC IP-6701/WS-08-1233

Dear Parties:

Enclosed herewith and served upon you mail, or by electronic service where indicated, is the Administrative Law Judge's Third Prehearing Order in the above-entitled matter.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY  
Administrative Law Judge

Telephone: (651) 361-7848

KDS:nh

Encl.

cc: Docket Coordinator

Print Close

## Service List Member Information

## Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Julia	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Betcher	Stephen	Steve.Betcher@co.goodhue.mn.us	County of Goodhue	Electronic Service	No
Brusven	Christina	cbrusven@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Cupit	Bob	bob.cupit@state.mn.us	Public Utilities Commission	Electronic Service	No
DeBleekere	Patricia	tricia.debleekere@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
Guerrero	Todd J.	tguerrero@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Haar	Burl W.	burl.haar@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Hammel	Karen Finstad	Karen.Hammel@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Hynes	Patrick	phynes@strobelhanson.com	Strobel & Hanson, P.A.	Electronic Service	No
Lindell	John	agorud.ecf@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Sheehy	Kathleen D.	kathleen.sheehy@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes

## Paper Service Member(s)

Last Name	First Name	Company Name	Address	Delivery Method	View Trade Secret
Levi	Jack	Goodhue Wind LLC	Suite 525, 3033 Excelsior Blvd., Minneapolis, MN-55416	Paper Service	No
Overland	Carol	Legaletric, Inc.	P.O. Box 176, Red Wing, MN-55066	Paper Service	No
Schlatter	Laura	Office of Administrative Hearings	P.O. 64620, Saint Paul, MN-55164	Paper Service	Yes
Schleck	Daniel	Mansfield, Tanick and Cohen P.A.	220 South Sixth Street, Suite 1700, Minneapolis, MN-55402	Paper Service	No
Steinberg	Leon	Goodhue Wind, LLC	3033 Excelsior Boulevard, Suite 525, Minneapolis, MN-55416	Paper Service	No

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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
600 NORTH ROBERT STREET  
ST. PAUL, MN 55101

**CERTIFICATE OF SERVICE**

<i>Case Title: In the Matter of the Application of AWA Goodhue Wind, LLC, for a Large Wind Energy Conversion System Site Permit for the 78 MW Goodhue Wind Project in Goodhue County</i>	OAH 3-2500-21662-2; PUC IP-6701/WS-08-1233
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Nancy J. Hansen certifies that on the 14th day of January, 2011, she served a true and correct copy of the attached Third Prehearing Order by serving it by U S Mail with postage prepaid, or by electronic service where indicated, addressed to the following individuals:

See attached service list



## 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

January 4, 2011

To All Parties on the Attached Service List

Re: *In the Matter of the Application of AWA Goodhue Wind, LLC,  
for a Large Wind Energy Conversion System Site Permit for  
the 78 MW Goodhue Wind Project in Goodhue County*  
OAH 3-2500-21662-2; PUC IP-6701/MS-08-1233

Dear Parties:

Enclosed herewith and served upon you mail, or by electronic service where indicated, is the Administrative Law Judge's Second Prehearing Order in the above-entitled matter.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY  
Administrative Law Judge

Telephone: (651) 361-7848

KDS:nh

Encl.

cc: Docket Coordinator

Print Close

Service List Member Information

Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Julia	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Betcher	Stephen	Steve.Betcher@co.goodhue.mn.us	County of Goodhue	Electronic Service	No
Brusven	Christina	cbrusven@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Cupit	Bob	bob.cupit@state.mn.us	Public Utilities Commission	Electronic Service	No
DeBleekere	Patricia	tricia.debleeckere@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
Guerrero	Todd J.	tguerrero@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service	No
Haar	Burl W.	burl.haar@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Hammel	Karen Finstad	Karen.Hammel@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Hynes	Patrick	phynes@strobelhanson.com	Strobel & Hanson, P.A.	Electronic Service	No
Lindell	John	agorud.ecf@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Sheehy	Kathleen D.	kathleen.sheehy@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes

Paper Service Member(s)

Last Name	First Name	Company Name	Address	Delivery Method	View Trade Secret
Levi	Jack	Goodhue Wind LLC	Suite 525, 3033 Excelsior Blvd., Minneapolis, MN-55416	Paper Service	No
Overland	Carol	Legalelectric, Inc.	P.O. Box 176, Red Wing, MN-55066	Paper Service	No
Schlatter	Laura	Office of Administrative Hearings	P.O. 64620, Saint Paul, MN-55164	Paper Service	Yes
Schleck	Daniel	Mansfield, Tanick and Cohen P.A.	220 South Sixth Street, Suite 1700, Minneapolis, MN-55402	Paper Service	No
Steinberg	Leon	Goodhue Wind, LLC	3033 Excelsior Boulevard, Suite 525, Minneapolis, MN-55416	Paper Service	No

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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW SECTION  
600 NORTH ROBERT STREET  
ST. PAUL, MN 55101

**CERTIFICATE OF SERVICE**

<i>Case Title: In the Matter of the Application of AWA Goodhue Wind, LLC, for a Large Wind Energy Conversion System Site Permit for the 78 MW Goodhue Wind Project in Goodhue County</i>	OAH 3-2500-21662-2; PUC IP-6701/WS-08-1233
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Nancy J. Hansen certifies that on the 4th day of January, 2011, she served a true and correct copy of the attached Second Prehearing Order by serving it by U S Mail with postage prepaid, or by electronic service where indicated, addressed to the following individuals:

See attached service list

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

In the Matter of the Application of AWA  
Goodhue Wind, LLC, for a Large Wind  
Energy Conversion System Site Permit  
for the 78 MW Goodhue Wind Project in  
Goodhue County

**SECOND PREHEARING ORDER**

The parties and participants in this matter submitted proposals for identifying issues and scheduling to the Administrative Law Judge pursuant to the First Prehearing Order.

Todd J. Guerrero, Fredrickson & Byron, PA, 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402-1425, appeared for AWA Goodhue Wind, LLC (Applicant).

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared for the Department of Commerce, Office of Energy Security, Energy Facility Permitting Staff (Department or OES/EFPP).

Stephen Betcher, County Attorney, and Carol Lee, Assistant County Attorney, 454 West Sixth Street, Red Wing, MN 55066, has appeared for Goodhue County, but the County did not submit a proposal in response to the First Prehearing Order.

Daniel S. Schleck, Mansfield Tanick & Cohen, PA, 1700 US Bank Plaza South, 220 South Sixth Street, Minneapolis, MN 55402-4511, appeared for the Coalition for Sensible Siting, the City of Zumbrota, and the City of Goodhue.

Carol Overland, Attorney at Law, P.O. Box 176, Red Wing, Minnesota 55066, appeared for Goodhue Wind Truth.

Patrick J. Hynes, Strobel & Hanson, PA, 406 West Third Street, Suite 200, Red Wing, MN 55066, appeared for Belle Creek Township.

Based upon the materials submitted, the Administrative Law Judge makes the following Prehearing Order:

## Background on Issues for Hearing

1. The Commission has identified the following matters for hearing:

- Development of a record on every standard in Article 18 of the Goodhue County Ordinances on Wind Energy Conversion Systems that is more stringent than what the Commission has heretofore applied to large wind energy conversion systems (LWECS), for the purpose of making recommendations regarding whether the standard should be adopted for LWECS in Goodhue County;

- Development of a record on the question of “good cause” as that term appears in Minn. Stat. § 216F.081, for the purpose of making recommendations on whether there is good cause for the Commission to not apply the standard to LWECS in Goodhue County; and

- Development of a record to determine whether there is sufficient evidence regarding health and safety to support two specific portions of Article 18: the 10-rotor diameter setback for nonparticipating residents, contained in Section 4, and the stray voltage requirements, contained in Section 6.

2. In the First Prehearing Order, the Administrative Law Judge required the parties to provide written submissions:

- A. Identifying the specific sections of Article 18 (**by section and subdivision**) that they believe are more stringent than those recommended by OES/EFP for this project;<sup>1</sup>
- B. Stating whether the sections specified above expressly conflict with the standards proposed by OES/EFP, merely supplement those standards, or address areas the Commission has not regulated in the past;
- C. Stating which of these specific sections should be applied as a condition of any permit to be issued to the Applicant;
- D. Describing any material facts regarding those standards that are in dispute; and

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<sup>1</sup> The recommended standards appear to be based on the Commission’s order establishing general wind permit standards, as modified by the Applicant’s agreement in this case to increase the setback from non-participating dwellings. See *In the Matter of Establishment of General Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts*, Order Establishing General Wind Permit Standards, Docket No. E,G-999/M-07-1102 (Jan. 11, 2008).

- E. Describing the type of evidence that the party would intend to offer at hearing in support of those material factual issues.

3. In response to the First Prehearing Order, most of the parties have submitted proposals on the sections described below. The Applicant's submission provides that it is willing to accept, as a condition of its permit, all standards contained in the County's ordinance, except as follows:

**A. Section 4, subdivision 1—Setbacks from Property Lines.** The County's ordinance provision for a commercial WEC specifies a 3 rotor-diameter (RD) setback on the non-prevailing wind axis and a 5 RD setback on the prevailing wind axis. The County's ordinance does not define a property line specifically. The Commission's general permit standards do not reference property lines, but provide for a wind access setback from lands and/or wind rights not under the permittee's control of 3 RD by 5 RD from the perimeter of the site boundary. It is unclear whether application of the County's property line setback would be more restrictive than application of the Commission's setback standards for the site boundary.

The Applicant has not specifically objected to application of the County's setback from property lines; and, as noted above, it is not clear whether the two setback standards would impact this project differently.

**B. Section 4, subdivision 1—Setbacks from Neighboring Dwellings.** The County's ordinance provision for a commercial WEC specifies a 750-foot setback from participating dwellings and a 10 RD setback for nonparticipating dwellings, unless the owner agrees to a lesser setback. The Commission's general permit standards require that turbines must be set back far enough to allow for compliance with the Pollution Control Agency Noise Standards, which is typically 750 to 1,500 feet, depending on turbine model, layout, and other site-specific conditions. In this case the OES recommended permit conditions calling for a 1,000-foot setback from the homes of project participants, and a minimum of a 1,500-foot setback from the homes of non-participants. The Applicant has agreed to the setbacks recommended by OES.

The County's ordinance provides a less stringent setback for participating dwellings, and a much more stringent setback for non-participating dwellings. OES points out that the ordinance contains a virtual double standard, because it allows a 750-foot setback for a non-commercial WEC (one with less than one MW of nameplate capacity), but requires a 10 RD setback for a commercial WEC (one with nameplate capacity of at least 1 MW). The Applicant contends that if this standard were applied to the project, only seven of the proposed 50 turbines could be built. No party appears to disagree with this assertion.

The City of Goodhue, the City of Zumbrota, and the Coalition for Sensible Siting have indicated that the factual record should be developed to determine the precise measurement of rotor diameter for the turbines proposed by the

Applicant, so that the 10 rotor-diameter distance can be exactly described. Belle Creek Township, on the other hand, contends the 10 RD setback would be 2,625 feet based on the maximum rotor length described in the application.

**C. Section 4, subdivision 1—Setbacks for Roads and other Rights of Way (ROW).** The County's ordinance provision for a commercial WEC provides for a public road setback of 1.1 times the height of a turbine, but allows for a possible reduction for minimum maintenance roads or roads with an average daily traffic count of less than ten. The Commission's general wind permit standards call for a minimum setback of 250 feet from the edge of the nearest road right-of-way, although this setback is to be handled on a case-by-case basis. The proposed route permit, drafted by OES, contains a 250-foot setback from the edge of the nearest road right-of-way.

The Applicant does not object to application of the ordinance standard for public roads to the project. Belle Creek Township, the City of Goodhue, the City of Zumbrota, and the Coalition for Sensible Siting have urged that the definition of "height" in this section of the ordinance should be interpreted to mean the same thing as "total height," as used with reference to non-commercial micro WECS and non-commercial WECS.

The ordinance provision for other ROW (railroads, power lines, etc.) provides for a setback of the lesser of (a) 1.1 times the total height of a turbine, or (b) the distance of the fall zone, as certified by a professional engineer, plus 10 feet. The fall zone is defined as the area that is the furthest distance from the tower base in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure. The Commission's general permit standards do not specifically address setbacks from other ROW. In the past, these setbacks have been negotiated by applicants and the entities controlling other rights-of-way within the site permit boundaries.

The Applicant asserts the ordinance provision for other ROW is ambiguous. It also objects to application of the ordinance in situations where the ROW owner has agreed to some different setback, and it questions the policy basis for applying the ordinance to this project. It is unclear how application of this requirement would impact the project. The City of Goodhue, the City of Zumbrota, and the Coalition for Sensible Siting request development of the record on whether the Applicant's turbine layout plan meets FAA requirements and general safety concerns with respect to its proximity to an existing private landing strip within the footprint of the project.

**D. Section 4, subdivision 1—Setbacks for Wetlands.** The County's ordinance provision for a commercial WEC provides for a wetlands setback of either (a) 1,000 feet, or (b) 3 RD non-prevailing by 5 RD prevailing, but it does not define the term "wetland." The Commission's general wind permit standards do not contain a wetland setback, but do provide that no turbines, towers, or

associated facilities shall be located in public waters wetlands, as defined in Minn. Stat. § 103G.005, subp. 15a (2008). Using that definition, a wetland means all type 3, 4, and 5 wetlands, as defined in U.S. Fish and Wildlife Service Circular No. 39, not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas. The Commission's permitting standards would allow an electric collector and feeder line to cross or be placed in public waters or public water wetlands, subject to permits obtained from the DNR and other government entities.

The Applicant asserts that the ordinance is vague and that it is left to guess at the meaning of the term, in that there is no definition of "wetland." The Applicant does not object to the permit condition proposed by OES or to the ordinance setback, if a similar definition of "wetland" is used. It does object if the ordinance is construed to include all types of jurisdictional wetlands (summarized in Minn. R. 8420, subp. 75), on the basis that the ordinance could exclude significant amounts of otherwise buildable area. The Applicant asserts that typical ordinance buffers for wetlands are on the order of 75 to 100 feet, not the 1,000 feet in the ordinance, and that jurisdiction over wetlands is with the Goodhue County Soil & Water Conservation District, with which the Applicant has coordinated its project.

The record is not clear how application of the ordinance standard would impact the project, perhaps in part because of the ambiguity created by the County's failure to define the term "wetland." Goodhue Wind Truth has indicated it would develop evidence on the setback distance recommended to protect wildlife landing, take-off, and flight over a wetland habitat.

**E. Section 5, subdivision 12—Discontinuation and Decommissioning.** Subdivision 12 B of the County ordinance requires that WECS shall have a decommissioning plan outlining the anticipated means and cost of removal at the end of the serviceable life or upon becoming a discontinued use. Subdivisions 12 C through 12 E of the County ordinance require an applicant to fund decommissioning with a cash escrow or irrevocable letter of credit in an amount equal to 125% of the cost estimate prepared by a competent party to ensure that decommissioning is completed as required by the ordinance. The ordinance is ambiguous in that it does not specify when the cash or irrevocable letter of credit is to be provided to the County.

The Commission's rule, Minn. R. 7854.0500, subp. 13, requires applicants to include information regarding decommissioning of the project and restoring the site, including a description of the anticipated life of the project; the estimated decommissioning costs in current dollars; the method and schedule for updating the costs of decommissioning and restoration; the method of ensuring that funds will be available for decommissioning and restoration; and the anticipated manner in which the project will be decommissioned and the site restored. The Commission's rule does not require a cash escrow or irrevocable letter of credit.

The Applicant has stated that it does not object to application of the ordinance, but it states that it does not intend to create a decommissioning fund prior to construction. Rather, it proposes that a cost estimate be made in year 15 of the project's life, in order to ensure that the decommissioning fund more accurately reflects actual costs at the end of the project's expected useful life of 25 to 30 years.

The City of Goodhue, the City of Zumbrota, and the Coalition for Sensible Siting have asked for development of the record to determine whether the Applicant's decommissioning plan is sufficient in the event that the owner of the project dissolves, ceases to exist, or files for bankruptcy protection.

**F. Section 6—Stray Voltage Testing.** Subdivisions 1 through 3 of the County ordinance require that a commercial WECS shall offer to perform at least two pre-construction stray voltage tests at all registered feedlots within the proposed project boundary and within a one-mile radius beyond the proposed project boundary. The results of any test are to be provided to property owners, the MPUC, local utilities, and the County. If a registered feedlot owner within the project boundary subsequently has a stray voltage test performed, and it is found that the cause of the stray voltage is attributed to the commercial WECS project, the project owners are required to pay for all costs associated with the testing and correcting of the problem. The Commission has not previously included any requirements pertaining to stray voltage in site permits for wind farms, based on the OES conclusion that there is no scientific basis for concluding that wind farms cause stray voltage.

The Applicant objects to application of this standard on the basis that there is no scientific or other support to justify the testing procedures and costs contemplated by Section 6. It is unclear how application of this ordinance section would impact the project.

**4. Miscellaneous Sections.** The Applicant has not objected to application of the following ordinance provisions to the project, but other parties have requested development of the factual record pertaining to them.

**A. Section 3, subdivision 6—**this section of the ordinance requires a commercial WEC to "provide proof of liability insurance covering the towers/project covering the lifespan of the project from the initial construction to final decommissioning." The ordinance does not specify any particular amount of insurance coverage. The City of Goodhue, the City of Zumbrota, and the Coalition for Sensible Siting request development of the record on the question whether the Applicant has "sufficient insurance coverage to meet the requirements" of Section 3, subdivision 6. Goodhue Wind Truth has also requested development of the record on whether the Applicant has liability insurance and the specifics of its coverage.

B. Section 5, subdivision 6—the County’s ordinance requires a commercial WECS to adhere to, but not exceed, FAA permits and regulations. It further provides that red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds, and that red pulsating incandescent lights should be avoided. Goodhue Wind Truth has indicated that it has questions about the Applicant’s compliance with this ordinance section.

C. Section 5, subdivision 8—the County’s ordinance requires that all feeder lines equal to or less than 34.5 kV, installed as part of a WECS, shall be buried where reasonably feasible. The Commission’s general wind permit standards provide that feeder lines measuring 34.5 kV may be placed overhead or underground. The proposed site permit provides that feeder lines may be overhead or underground, and that locations “shall be negotiated with the affected landowner(s).” Applicant has not objected to application of this section of the ordinance. Belle Creek Township asserts that the permit should contain an explicit requirement that feeder lines be buried, because overhead lines have a greater potential for accidents and decrease the aesthetic value of the landscape.

D. Section 5, subdivision 10—Mitigation of Damage to Public Infrastructure. The County’s ordinance requires a commercial WECS to provide a cash escrow or irrevocable letter of credit in an amount equal to 125% of the cost to repair anticipated damages to public infrastructure, including public roads and drainage systems as determined by the road authority. The funds would be held until the County issues a written release stating that the applicant has returned all routes to pre-construction condition.

The Commission’s general permit standards require an applicant to “make satisfactory arrangements” for road use, access road intersections, maintenance and repair of damages, with the governmental jurisdiction having authority over each road. The permittee is to notify the permitting authority of such arrangements upon request.

E. Section 7, subdivisions 1 and 2—Preliminary Acoustic Study for Commercial WECS projects. This ordinance section requires the applicant to provide an acoustic study that demonstrates the project will be compliant with State of Minnesota Noise Standards. The study shall include the estimated dB(A) levels at all receptors within one mile of the nearest turbine within a project area and shall include accumulated sound within the project.

The Applicant has not objected to this requirement. The City of Goodhue, the City of Zumbrota, and the Coalition for Sensible Siting contend the record should be developed on whether “modeling alone is enough to assure protection” with these requirements. Because the ordinance calls for a preliminary study, it is unclear how these parties believe an applicant would demonstrate compliance with Section 7.

## Pre-Filing of Testimony

5. It does not appear from the prehearing submissions of the parties that there are any genuine issues of material fact at this time, although there are open factual questions about the impact of applying the ordinance standards that should be developed at hearing. Accordingly, the Administrative Law Judge has determined that the Applicant will file direct testimony describing all impacts on the project should the ordinance standards identified in paragraphs 3 and 4 above be applied to the project. If there is ambiguity in the ordinance, the Applicant should address the ambiguities as best it can and should describe the range of possible impacts, depending on how the ordinance is interpreted.

6. The Intervenors (except for OES) shall file rebuttal testimony describing (1) whether they agree or disagree with the impacts on the project described by the Applicants; and (2) the basis for concluding that public health and safety considerations, or other public policy considerations, support application of the above standards to the project.

7. The Applicant may submit Surrebuttal testimony in response to matters raised by the Intervenors. OES, in its role as an adviser to the Commission, may submit comments at the time of the Applicant's surrebuttal.

8. Any entity participating as a full party will be required to pre-file written testimony; the hearing itself will be limited to the receipt of pre-filed testimony into evidence and cross-examination of sponsoring witnesses.

9. The Applicant and Goodhue Wind Truth were the only parties that submitted a specific proposed schedule, and their proposals were similar. The following schedule is adopted:

Applicant's Direct:	February 4, 2011
Intervenor Rebuttal:	March 4, 2011
OES Comments and Applicant's Surrebuttal:	March 16, 2011
Hearing, at the PUC:	March 29-31, 2011
Post-hearing memoranda:	April 15, 2011
ALJ Recommendation:	May 18, 2011

## Pending Motion for Summary Disposition

10. On December 30, 2010, the Applicant filed a motion for summary disposition. The Commission has requested development of a factual record on the application of the County's ordinance standards to this project and whether there is, or is not, good cause to apply those standards. These issues are not susceptible of summary disposition, and no party is required to respond to the Applicant's motion prior to the hearing. As the Administrative Law Judge indicated in the First Prehearing Order, the other parties should respond in their post-hearing memoranda to the legal arguments regarding application of the good cause standard in Minn. Stat. § 216F.081 (2008), including the issue whether the statute is intended to apply only to counties that have assumed the responsibility to process applications and issue permits for LWECS with a combined nameplate capacity of less than 25 MW, pursuant to Minn. Stat. § 216F.08.

## Discovery

11. A party may serve requests for information on any other party. All requests for information shall be made in writing by electronic mail. If expressly requested by another party, the requesting party shall follow the electronic mail message with a copy of the request sent by regular U.S. mail or other delivery service to the requesting party. **Information requests shall NOT be eFiled or served on the Administrative Law Judge or Court Reporter.** To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, a request shall only be between the requesting party and responding party, and the requesting party shall follow the electronic mail message with a public version of the request. Requests shall be sent to the person(s) designated to receive data requests on behalf of the party from whom the information is sought. Any request received by electronic mail or other means 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.

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

13. Public and Non-Public responses to information requests shall be submitted by electronic mail message. If expressly requested by another party, the responding party shall follow the electronic mail message with a copy of the response sent to the requesting party by regular U.S. mail or other delivery

service. **Responses to information requests shall NOT be eFiled or served on the Administrative Law Judge or Court Reporter.** Any response received after 4:30 p.m. on a business day is considered to be received the following business day.

14. If the responding party is unable to send the response by electronic mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or 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 optical data storage (DVDs or 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, as soon as reasonably possible, 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.

15. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may require that the requesting party comply with the terms of the Protective Order in this matter before providing the information.

16. If the responsive information cannot be supplied within eight 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 attempt to work out a schedule of compliance with the requesting party. If the parties agree that responsive information cannot be supplied within eight business days, but they are unable to work out a satisfactory schedule of compliance, the requesting party may informally request, before bringing a motion to compel discovery, that the Administrative Law Judge set a target schedule for compliance.

17. 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. Such motions may be submitted informally by electronic mail. Notice of such motions will be made by electronic mail. Informal motions to address discovery requests and responses will usually be heard by telephone conference.

### **Prefiled Testimony**

18. 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.

19. A paper copy of prefiled testimony being offered for admission into the record at the hearing shall be provided for use at the hearing. The offering party will identify the document as having been eFiled (with the unique eFile identifying number of the document). The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

20. Corrections to any prefiled testimony shall be identified and marked on the paper copy of the exhibit. Those changes will be eFiled as soon as practical after the hearing. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any supplemental record data will be identified by the Administrative Law Judge as included in the official record.

21. Prefiled testimony that is not offered into the record, or stricken portions of prefiled testimony that is offered, 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.

### **Witnesses**

22. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: the Applicant; the County; other intervenors in the order of intervention; and OES. Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge.

23. In the event that a witness must be scheduled for a day-certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.

24. Witnesses will be allowed ten minutes in which to summarize their prefiled testimony. In order for a witness to respond to new information raised in another party's surrebuttal testimony, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a showing of good cause for not having addressed that information in prefiled testimony.

25. Parties shall examine and cross-examine witnesses through their attorneys if they 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.

26. 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' prefiled testimony (except surrebuttal testimony) shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, no later than **4:30 p.m.** on March 24, 2011.

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

27. Original documents shall be filed using the Commission's eFiling system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3, and the Commission's standards. In any instance where the eFiling system cannot be used, the original documents shall be filed by delivery or mail with the Administrative Law Judge.

28. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

29. Public copies of all documents that are filed shall be served by electronic mail according to the attached official service list by 4:30 p.m., and a hard copy shall also be mailed or delivered that day to the persons indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

30. Copies of trade secret and other nonpublic data shall be transmitted by electronic mail, U.S. Mail or delivery service to the parties who have signed Exhibit A to the Protective Order. Such documents may be served on the next business day following the filing of the public version.

31. 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 in accordance with the Commission's standards.

32. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing 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 are available from the Commission's website at: [www.puc.state.mn.us/PUC/naturalgas/data-practices/index.html](http://www.puc.state.mn.us/PUC/naturalgas/data-practices/index.html). Access to nonpublic data shall be governed by the Protective Order to be issued in this proceeding.

Dated: January 4, 2011

  
KATHLEEN D. SHEEHY  
Administrative Law Judge