

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd
J. Dennis O'Brien
Phyllis Reha
Thomas Pugh
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

Joe Grennan, Permitting Director
Pleasant Valley Wind, LLC c/o
Renewable Energy Systems Americas Inc.
11101 W. 120th Ave Suite 400
Broomfield, CO 80021

SERVICE DATE: January 19, 2010
DOCKET NO. IP-6828/WS-09-1197

In the Matter of the Application of Pleasant Valley Wind, LLC for a Large Wind Energy Conversion System (LWECS) Site Permit for the 300 MW Pleasant Valley Wind Project in Dodge and Mower Counties

The above entitled matter has been considered by the Commission and the following disposition made:

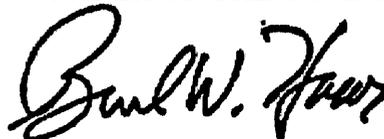
Accepted the Pleasant Valley Wind, LLC, Site Permit Application for a Large Wind Energy Conversion System as complete provided that: a) Pleasant Valley Wind, LLC, will provide additional information to the Commission and the Office of Energy Security Energy Facilities Permitting staff as requested, and b) will file a revised application containing the information identified by the Office of Energy Security Energy Facilities Permitting staff prior to distribution of the application pursuant to Minnesota Rules, part 7854.0600.

Authorized the Office of Energy Security Energy Facilities Permitting staff to name a public advisor for this project.

Granted a variance to Minnesota Rules, part 7854.0800 to extend the period for the Commission to make a preliminary determination on whether a permit may be issued or should be denied for an unspecified, but reasonable period of time.

The Commission agrees with and adopts the recommendations of the Office of Energy Security which are attached and hereby incorporated in the Order.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

(S E A L)

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF THE
MINNESOTA OFFICE OF ENERGY SECURITY
ENERGY FACILITY PERMITTING STAFF**

DOCKET NO. IP-6828/WS-09-1197

Meeting Date: January 12, 2010.....Agenda Item # 4

Company: **Pleasant Valley Wind, LLC (Pleasant Valley Wind)**

Docket No. **IP-6828/WS-09-1197**

In the Matter of the Application of Pleasant Valley Wind, LLC for a Large Wind Energy Conversion System (LWECS) Site Permit for the 300 MW Pleasant Valley Wind Project in Dodge and Mower Counties.

Issue(s): Should the Public Utilities Commission (Commission) accept the Application of Pleasant Valley Wind, LLC, for a Large Wind Energy Conversion System as complete and appoint a Public Advisor?

Should the Commission vary Minnesota Rules, part 7854.0800 to allow more time for a preliminary determination on whether a permit should be issued or denied for a Large Wind Energy Conversion System?

OES Staff: Ingrid E. Bjorklund651-297-7039

Relevant Documents

Pleasant Valley Wind, LLC, Site Permit Application.....November 23, 2009

The enclosed materials are the work papers of the Office of Energy Security (OES) Energy Facility Permitting Staff (EFP). They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted. This document can be made available in alternative formats, i.e., large print or audio tape by calling (651) 201-2202 (Voice) or 1-800-627-3529 (TTY relay service).

Documents Attached

1. Site Map

See eDocket filings (09-1197) at <https://www.edockets.state.mn.us/EFiling/search.jsp>, or the PUC website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=25724> for project related documents.

Statement of the Issues

Should the Commission accept, conditionally accept, or reject the application of Pleasant Valley Wind, LLC, for a Large Wind Energy Conversion System (LWECS) site permit as complete for the 300 MW Pleasant Valley Wind Project in Dodge and Mower counties? If the Application is accepted, should the Commission appoint a Public Advisor?

Should the Commission vary Minnesota Rules, part 7854.0800 to allow more time to determine whether a permit may be issued or should be denied for the 300 MW Pleasant Valley Wind Project in Dodge and Mower counties?

Introduction and Background

Pleasant Valley Wind, LLC (Applicant or Pleasant Valley Wind) has submitted a site permit application to construct the proposed 300 megawatt (MW) Pleasant Valley Wind Project in Dodge and Mower counties. Pleasant Valley Wind is a wholly owned subsidiary of Renewable Energy Systems Americas Inc.

Project Location

The proposed Pleasant Valley Wind Project will be located in southern Dodge and northern Mower counties in Hayfield and Vernon townships of Dodge County and Waltham, Sargeant, Pleasant Valley, Red Rock, and Dexter townships of Mower County. The project area is located several miles northeast of the city of Austin and approximately 15 miles west of Rochester. The project area, approximately 52,000 acres in size, will encompass lands north of I-90, as shown on the accompanying map. Pleasant Valley Wind currently has sufficient wind rights within the project area. Pleasant Valley Wind believes the site is sufficiently large to provide flexibility in the micro-siting process.

Project Description

The project for which a permit is being requested includes the following associated facilities:

1. A wind turbine layout consisting of either 200 General Electric 1.5 MW wind turbine generators mounted on 80 meter (262.5 foot) towers and a rotor diameter of 82.5 meters (270 feet) or 130 Siemens 2.3 MW wind turbine generators mounted on 80 meter (262.5 foot) towers and a rotor diameter of 101 meters (331 feet);
2. Gravel access roads;
3. Electrical collection system, three project substations, three transmission lines, six temporary and two permanent meteorological towers; and
4. Operations and maintenance building.

The Applicant's goal is to complete the construction of the project and achieve commercial operation prior to December 2012.

Regulatory Process and Procedures

Commission review of LWECS is a two step process: first is the Certificate of Need (CN) process and second is the site permit process. The following provides an overview of the CN and site permit processes.

Certificate of Need Process

A CN is required for the Pleasant Valley Wind Project because, as a 300 MW LWECS, it qualifies as a "large energy facility" as defined by Minn. Stat. § 216B.2421, subd. 2(1). The Applicant applied for a CN from the Commission (October 27, 2009) prior to filing its site permit application. See Docket No. 6828/CN-09-937.

On December 23, 2009, a Commission Order accepted Pleasant Valley Wind's certificate of need application and provided for use of the informal review process to develop the CN record, using comment and reply.

As part of the CN process, public notices are issued and EFP conducts a public meeting and prepares an Environmental Report evaluating the human and environmental impacts of the proposed project. A public hearing is also held.

Site Permit Process

A site permit from the Commission is required to construct a LWECS, which is any combination of wind turbines and associated facilities with the capacity to generate five megawatts or more of electricity. This requirement became law in 1995. The Minnesota Wind Siting Act is found at Minnesota Statutes Chapter 216F. The rules to implement the permitting requirement for LWECS are in Minnesota Rules Chapter 7854. Pleasant Valley Wind filed a site permit application for the Pleasant Valley Wind Project with the Commission on November 23, 2009.

Site Permit Application Contents

The required contents of a site permit application are specified in Minnesota Rules, part 7854.0500. These information requirements include, but are not limited to, applicant background information, certificate of need compliance, compliance with state policy, proposed site maps, wind characteristics, turbine locations, discussion of wind rights, project design, associated facilities, environmental impacts, project construction, project operation, costs, schedules, energy projections, and decommissioning and restoration.

Application Acceptance

Application acceptance is guided by Minnesota Rules, part 7854.0600. The Commission may elect to accept, conditionally accept, or reject the application. If the Commission conditionally accepts or rejects an application, the Commission must advise the Applicant of the deficiencies in the application and the manner in which the deficiencies can be addressed.

Within 15 days of LWECS site permit application acceptance, the Applicant is required to provide notice of application acceptance. In addition to publishing this notice in a newspaper of

general circulation in each county, the notice is distributed to the county board, each city council and each township board in each county where the LWECs is proposed to be located. This notice is also posted on eDockets and on the PUC's energy facility permitting web page. In practice this notice is developed by the Applicant with assistance from OES staff to ensure that the notice meets the requirements and intent of Minnesota Rules, part 7854.0600.

As a part of the notice requirements of Minnesota Rules, part 7854.0600, the Applicant must provide a copy of the accepted application to each landowner within the site. The Applicant is also required to distribute the accepted application to the Minnesota Historical Society, the regional development commission(s) within which the LWECs is proposed to be located, the auditor of each county, and the clerk of each city and township in which the LWECs is proposed to be located. The auditors and clerks are to retain the application and make it available for public inspection on request. In practice, the Applicant also provides a copy of the application to anyone requesting a copy. The Applicant is responsible for maintaining the application distribution list. In practice, EFP staff also distributes or has the Applicant distribute copies of the application accompanied by a cover memorandum, requesting comments on the application or the project, to technical representatives from state agencies (Pollution Control Agency, Department of Natural Resources, Department of Transportation, Department of Employment and Economic Development, Board of Water and Soil Resources) that may have permitting or review authority over the Project.

Public Advisor

Minnesota Rules, part 7854.0700 states: "Upon acceptance of an application for a site permit, the commission shall designate a staff person to act as the public advisor on the project." The Commission can authorize EFP to name a staff member from the EFP staff as the public advisor or assign a Commission staff member.

Preliminary Determination on Draft Site Permit

Minnesota Rules, part 7854.0800 states that: "Within 45 days after acceptance of the application by the commission, the commission shall make a preliminary determination whether a permit may be issued or should be denied. If the preliminary determination is to issue a permit, the commission shall prepare a draft site permit for the project. The draft site permit must identify the permittee, the proposed LWECs, and proposed permit conditions."

Issuing a draft site permit does not confer an authority to construct an LWECs. The Commission may change, amend or modify the draft site permit in any respect before final issuance or may deny the site permit at a later date.

Public Participation Process

Public participation in the LWECs site permitting process is guided by Minnesota Rules, part 7854.0900. The Commission provides public notice of the availability of the draft site permit. The notice is required to include:

- Applicant's contact information;
- A brief description of the proposed project, including a proposed site map;
- Locations where the application and draft site permit are available for review and information on how to obtain a copy of the application and site permit;

- The role of the public advisor and how the public advisor may be contacted to obtain more information about the process or the project;
- Time and place of the public information meeting held by the EFP staff;
- The date on which the comment period terminates;
- A statement that during the comment period any person may submit written comments to the Commission on the draft site permit; and
- A statement that a person may request a contested case hearing on the matter.

Notice of draft site permit availability is sent to all persons or agencies who received a copy of the accepted application, published in local newspaper(s) and the *EQB Monitor*, and posted on eDockets and on the Commission's energy facilities permitting web page.

In cases where the Commission elects to issue a draft site permit when the LWECS site permit application is accepted, the notice requirements of application acceptance (Minn. Rules, part 7854.0600, described above in *Application Acceptance*) can be and are typically combined with the notice requirements of Minnesota Rules, part 7854.0900.

The public information meeting serves several functions. First, it provides EFP staff with the opportunity to provide an overview of the Commission's role in the review and approval of LWECS and associated facilities and to respond to questions or comments about the regulatory review process. Second, it also provides the Applicant with an opportunity to present an overview of its proposed LWECS project. Prior to the public meeting, interested persons and governmental agencies would have received the LWECS application and draft site permit. Third, the public meeting provides the public with an opportunity to ask questions of the Applicant and EFP staff and offer comments on the application and draft site permit, which serve as the environmental documents for the project.

The rule requires a minimum of 30 days (commencing with the notice of draft site permit availability in the *EQB Monitor*) for any interested person to submit comments on either the site permit application or the draft site permit. The rule also contemplates that the Commission may wish to extend the public comment period to afford the public adequate time to review the application and other pertinent information in order to formulate complete comments on the draft site permit and the project.

Criteria for a Variance

Minnesota Rules, part 7829.3200 provides that the Commission shall grant a variance to its rules when it determines that the following three conditions are met:

- A. enforcement of the rule would impose an excessive burden upon the application or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

OES EFP Staff Analysis and Comments

The application has been reviewed by EFP staff pursuant to the requirements of Minnesota Rules Chapter 7854 (Wind Siting Rules). The application provides the information required by Minnesota Rules, part 7854.0500 in a format that all members of the public can access. The

application meets the completeness requirements; however, EFP staff believes additional information is needed prior to the distribution of the application under Minnesota Rules, part 7854.0600, subp. 3, to facilitate the public participation process. Therefore, EFP staff is requesting the following information, as discussed with the Applicant, to be included in a revised and re-filed application: name and signature of the preparer of the application; clarification of site control; and additional maps.

Acceptance of the application as complete pending the filing of a revised application will allow staff to initiate the procedural requirements of Minnesota Rules Chapter 7854. EFP staff also is requesting that the Commission direct the applicant to honor requests for additional information as necessary to facilitate the review process.

When the CN and site permit processes are run sequentially, the differing requirements and time frames are of little consequence. However, when they run concurrently, as in the case with Pleasant Valley Wind, the differing requirements between the CN rules (Minnesota Rules Chapter 7849) and the LWECS site permit rules (Minnesota Rules Chapter 7854) present barriers with respect to process coordination and public input. Therefore, EFP staff is requesting that the Commission vary the procedural requirement of Minnesota Rules, part 7854.0800 that requires a preliminary determination on whether to issue a draft site permit within 45 days.

For example, without a variance, EFP staff believes that the Commission would be placed in the position of having to make a preliminary determination on a draft site permit, before a completion of the scoping process to determine what should be included in the environmental report for the CN. Several other potential procedural requirements of the rules (CN and siting) if not coordinated, may also result in less efficiency and limit the ability of the public to participate in the procedural review required by the CN and siting rules.

Commission action to vary this requirement would afford the PUC and EFP staff the opportunity to provide for more timely coordination and sequencing of the CN and LWECS site permit procedural requirements, including combining notice requirements, holding joint public meetings and comment periods and including site permit issues within the scope of the CN public hearing. The result would be greater efficiency and enhanced opportunity for participation.

EFP staff believes that this request meets the conditions for granting a variance outlined in Minnesota Rules, part 7829.3200. First, enforcement of the rule would impose an excessive burden on the Commission, its staff, the EFP staff, and other interested persons because of the short time available between application review and the time in which a draft site permit must be addressed by the Commission and because of sequencing and timing issues between the CN procedural requirements and the site permit review requirements for LWECS projects.

Second, the public interest would be better served by allowing sufficient time for agencies to review the site permit application and by providing for proper sequencing and review under the CN and site permit review procedural requirements, which can be better coordinated by the granting of a variance request.

Third, EFP staff believes that an extension, if granted, would not conflict with standards imposed by law.

EFP staff is not aware of any opposition to tolling the time; however, the Commission may wish to offer interested persons the opportunity for oral comment at the Commission meeting.

Commission Decision Options

A. Application Acceptance

1. Accept the Pleasant Valley Wind, LLC, Site Permit Application for a Large Wind Energy Conversion System as complete provided that: a) Pleasant Valley Wind, LLC, will provide additional information to the Commission and the Office of Energy Security Energy Facilities Permitting staff as requested, and b) will file a revised application containing the information identified by the Office of Energy Security Energy Facilities Permitting staff prior to distribution of the application pursuant to Minnesota Rules, part 7854.0600.
2. Reject the Application as incomplete and issue an order indicating the specific deficiencies to be remedied before the Application can be accepted.
3. Find the Application complete upon the submission of supplementary information.
4. Make another decision deemed more appropriate.

B. Public Advisor

1. Authorize the Office of Energy Security Energy Facilities Permitting staff to name a public advisor for this project.
2. Appoint a Commission staff person as public advisor.
3. Make another decision deemed more appropriate.

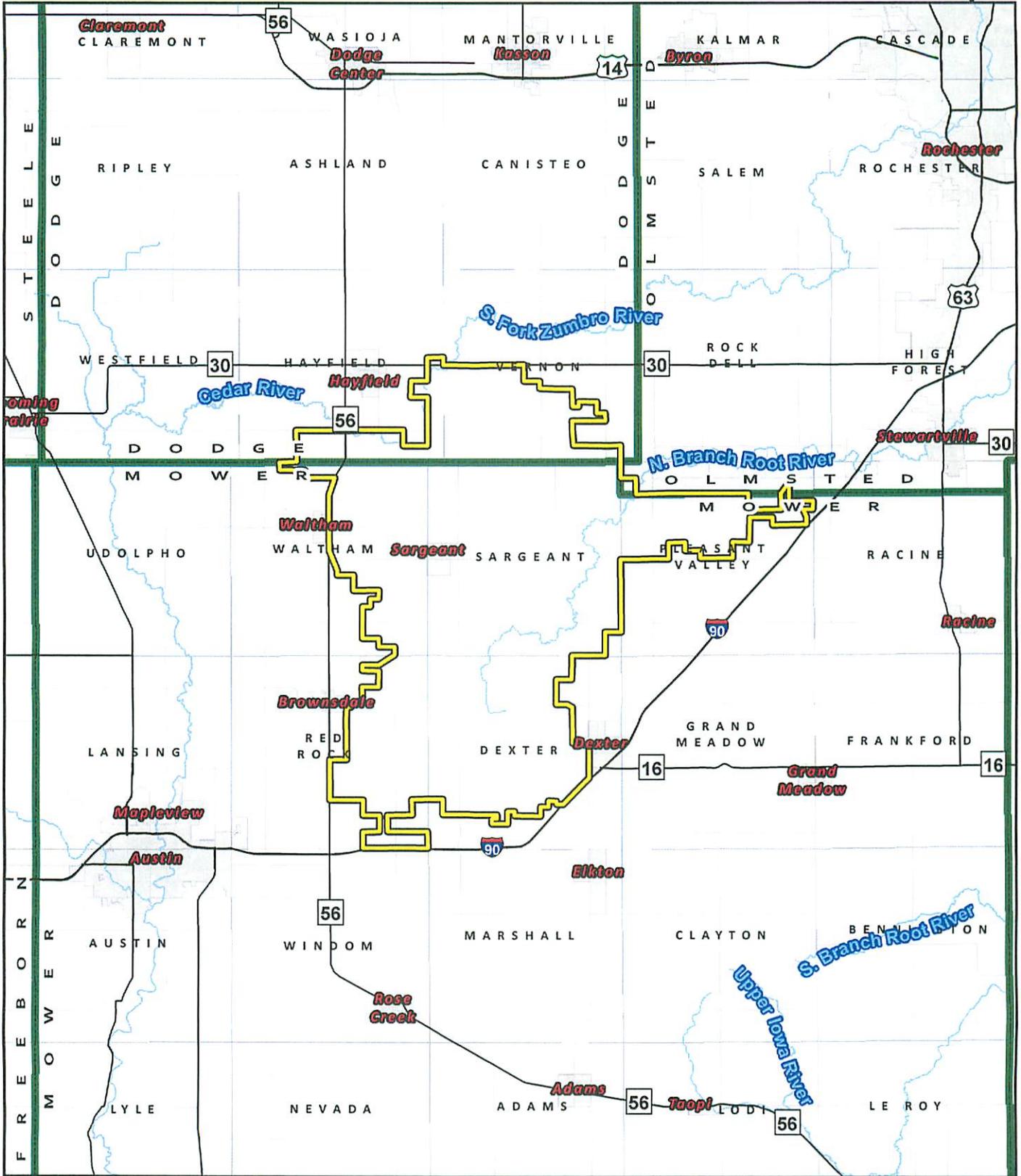
C. Variance Request

1. Grant a variance to Minnesota Rules, part 7854.0800 to extend the period for the Commission to make a preliminary determination on whether a permit may be issued or should be denied for an unspecified, but reasonable period of time.
2. Make some other decision deemed more appropriate.
3. Deny the request for a variance.

DOC EFP Staff Recommendation: Staff recommends option A1, B1 and C1.

PROJECT LOCATION

map 1



Project Boundary
 County Boundaries
 Rivers

0 1.5 3 6
 Miles
 1 inch = 22,000 feet
 Projection: NAD83 UTM Zone 15N

RICE	GOOD	WABA
STEE	DODG	OLMS
FREE	MOWE	FILL

Area of Interest

Service List Name	First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
OFF_SL_9-1197_Official	Brian	Meloy	brian.meloy@leonard.com	Leonard, Street & Deinard	150 S 5th St Ste 2300 Minneapolis, MN 55402	Paper Service	No
OFF_SL_9-1197_Official	Burl W.	Haar	burl.haar@state.mn.us	MN Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	No
OFF_SL_9-1197_Official	Joe	Grennan	joe.grennan@res-americas.com	Pleasant Valley Wind LLC	c/o Renewable Energy Systems Americas Inc. 11101 W. 120th Ave Suite 400 Broomfield, CO 80021	Paper Service	No
OFF_SL_9-1197_Official	John	Lindell	agorud.ecf@state.mn.us	OAG-RUD	900 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	No
OFF_SL_9-1197_Official	Julia	Anderson	Julia.Anderson@state.mn.us	MN Office Of The Attorney General	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	No
OFF_SL_9-1197_Official	Sharon	Ferguson	sharon.ferguson@state.mn.us	State of MN - DOC	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	No

