OAH 8-2500-21746-2
MPUC No. E999/M-10-222

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the 2010 Annual Hearing on the Power Plant Siting and Transmission Line Routing Program

REPORT TO THE COMMISSION

On December 7, 2010, the Minnesota Public Utilities Commission requested that the Office of Administrative Hearings conduct on its behalf the 2010 Annual Hearing on the Power Plant Siting Act Programs, held pursuant to Minn. Stat. § 216E.07 (2008).[1] Administrative Law Judge Eric L. Lipman conducted the public hearing commencing at 10:00 a.m. on December 28, 2010, at the Saint Paul offices of the Minnesota Public Utilities Commission.

Following a 34-day public comment period, the hearing record closed at 4:30 p.m. on February 1, 2011.[2]

The Annual Hearing has two key purposes. It is intended to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines. Additionally, the annual hearing affords interested persons an opportunity to be heard regarding the Commission's activities, duties or policies pursuant to the Power Plant Siting Act.[3]

Notice of the Annual Hearing

Minn. Stat. § 216E.07 requires the Commission to hold an annual public hearing in order 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. The Commission must provide at least ten days but no more than 45 days' notice of the annual meeting by mailing or serving electronically a notice to those persons who have requested notice and by publication in the *EQB Monitor* and the Commission's weekly calendar. Additionally, this Notice of the hearing must be accompanied by a tentative agenda for the hearing.[4]

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[1] Ex. 1.

[2] Public Hearing Transcript, at 88.

[3] *See* Minnesota Statutes Chapter 216E; Minnesota Rules Chapter 7850.1000 to 7850.5600 (2007).

[4] *See* Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2 (2007).

On December 7, 2010, the Commission served notice of the annual hearing, along with a tentative agenda, to those persons who requested notice.[5] The notice was published in the *EQB Monitor* on December 13, 2010.[6] Further, notice of the hearing was posted on the Commission's web calendar throughout notice and public comment periods.[7]

Approximately a dozen members of the public (not including staff of the Office of Energy Security or staff of the Commission) attended the hearing.

Introductions from Commission and OES Staff

Bob Cupit of the Minnesota Public Utilities Commission staff introduced himself and offered the exhibits documenting the Commission's compliance with the applicable notice requirements. He explained that the Power Plant Siting Act is administered jointly by the Commission and the Minnesota Office of Energy Security (OES). Mr. Cupit described the OES Energy Facility Permitting unit, whose staff members are responsible for managing the development of siting and routing decision records, conducting environmental reviews, and making recommendations to the Commission. He also described the roles of the Commission and its staff.

Deborah Pile of the OES introduced herself and described the work of the ten-member team of project managers, who provide the environmental review associated with each project. Ms. Pile described the unit's maintenance of lists of persons who desire to receive notices on all permitting processes, as well as lists of persons who wish to participate in specific proceedings.

Next, Ms. Pile summarized the work completed by the OES Energy Facility Permitting Staff in 2010. The OES issued 19 environmental documents in 2010. These materials related to one power plant, one pipeline, eight transmission lines and nine wind farms. Ms. Pile also noted that applications for six wind farms and seven transmission lines are currently under review.[8]

Summary of Public Hearing Testimony

A. *Remarks of Carol Overland*

Carol Overland, an attorney at law, testified at the hearing and offered eight exhibits into the hearing record.[9] In her remarks, she outlined a number of critiques of the Power Plant Siting Act program. In the main, she regards the program as poorly

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[5] Ex. 1.

[6] Ex. 3.

[7] *See* http://www.puc.state.mn.us/puc/calendar/index.html?date=12/1/10.

[8] Exs. 7 through 14; *see also,* Written Comments (E-Docket No. 20112-59140-01).

[9] Exs. 4, 5 and 6.

structured, overly solicitous of utility companies and insufficiently funded. In her view, these deficits combine to deprive the public of important information and lead the Commission into error.

Ms. Overland believes that the membership of local advisory task forces is unreasonably limited and includes too few citizen members. She argued that the task forces are an important feature of the fact-finding process and should be chartered as a matter of course. She likewise suggested that the task force process provide better opportunities for public comment.

Ms. Overland recommended a broader series of publicly-funded supports for the development of the record in utility cases. She urged the establishment of a Department of Public Advocate, use of public funds to defray the fees of attorneys and experts retained by intervenors, disclosure of hearing transcripts to the public without charge, and improvements to the process of notifying landowners of changes to an Applicant's proposed routing. She likewise suggested that the number and range of experts employed by the Energy Facility Permitting Unit be expanded – particularly in the field of electrical engineering.

Ms. Overland is critical of the narrow breadth and detail of the environmental review process. She urged closer cooperation between the state and federal agencies in developing Environmental Impact Statements and recommended that the Commission be prohibited from selecting routes that have not been subject to environmental review. She expressed frustration that, in many cases, a Final Environmental Impact Statement is issued after the adjournment of the evidentiary hearing.

Asserting that many local governments lack the resources to conduct a proper review of Community Based Energy Development (C-BED) projects, and therefore are not undertaking such processes, Ms. Overland expressed skepticism that smaller projects receive a meaningful review. Ms. Overland urged statutory revisions that would clarify the process for challenging determinations of C-BED eligibility.

Ms. Overland hopes for more agency participation in the hearing process; particularly from the Minnesota Department of Natural Resources (DNR) and the Minnesota Department of Transportation (MnDOT). She likewise asserted that the agency position on the Applicant's proposals should be disclosed earlier in permitting proceedings.

Ms. Overland suggested that the OES website should be revamped so as to make clear the difference between postings there and the broader range of filings in the Commission's E-Docket system.

Regarding the administrative process, Ms. Overland made a number of recommendations. She suggested that intervenors should not be required to pre-file testimony in order to retain their status as parties to contested cases. She

recommended that persons participating in the public hearing process be sworn and provide their testimony under oath. She urged clarifications to the permitting factors found in statutes so as to give greater guidance to relative weighting of, and relationship among, statutory factors. Finally, she argued that Commission members should be more closely vetted for disqualifying conflicts of interest.[10]

By way of a letter dated February 1, 2011, Ms. Overland submitted as a written comment in this proceeding what purported to be a Petition for the Adoption of a Rule under Minn. Stat. § 14.09 and Minn. R. 1400.2500. While the blending of that specialized request for relief, with the public comments in this docket, was as unorthodox as it was unforeseen, the writing does have the benefit of reflecting Ms. Overland's draftsmanship of her proposals for reform. And so, without reaching either the question of whether the inclusion of the "Petition" as a written comment in this docket satisfies the service requirements of Minn. R. 1400.2500, or how the "Petition" might operate as to administrative rules that the Commission did not promulgate in the first instance, it is commended to the Commission's review.

B. *Remarks of Jamie Schrenzel*

Jamie Schrenzel, of the Minnesota Department of Natural Resources, began her remarks by reviewing the DNR's role in siting and routing proceedings and some of the Department's work in this area during 2010.

Among the positive developments noted by Ms. Schrenzel are an earlier development of environmental mitigation plans and implementation of more robust permitting conditions.

Ms. Schrenzel had three recommendations for improvements. She noted that OES, the Commission and the DNR are assembling an interagency work group to address new developments in wind energy. She suggested that it may be useful to broaden the mandate of this workgroup so as to include transmission, environmental review and permitting issues.

Second, Ms. Schrenzel urged the development of methods that would more sharply focus the DNR's assessment resources. As Ms. Schrenzel explained, in many transmission line cases, the environmental review documents examine a wide and lengthy route – a large terrain that potentially allows planning and micrositing within the route. Yet, because more parcels of land are included within this "flexible" approach, precisely determining the impact of the routing on any one parcel is made more difficult. She suggested better coordination between the Applicant, DNR and OES on the substance of the Department's review. Alternatively, in those cases where the number of environmentally-sensitive areas along a route can be narrowed, DNR can better focus its assessment resources and provide a more detailed review of these impacts.

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[10] Tr. at 19-42, 73-79; Exs. 7-14.

Finally, Ms. Schrenzel urged standardization when possible in the development of mitigation plans. Common, best practice features in mitigation plans, argues Schrenzel, would benefit both the applicant and agency reviewers. It would provide greater certainty and facilitate the receipt of technical input at earlier stages in the process.[11]

C. *Remarks of Paul Reese*

Paul Reese, a member of the Coalition for Sensible Siting, urged the Commission to appoint an advisory task force in *The Matter of the Commission Investigation into Large Wind Energy Conversion Systems Permit Conditions on Setbacks and the Minnesota Department of Health Environmental Health Division's White Paper on Public Health Impacts of Wind Turbines*, MPUC Docket No. E-999/CI-09-845. While expressing gratitude that this docket remains open, he worried that the Commission process will still not be able to access the most current research. Additionally, Mr. Reese expressed concern that independent power providers will be able to use the power of eminent domain in support of their projects. Lastly, he urged revising the exemption found in Minn. R. 7850.1400, to make the "prime farmland exclusion" of Minn. R. 7850.4400, subpart 4, applicable to small wind projects.[12]

D. *Remarks of Kia Hackman*

Kia Hackman, a homeowner along the proposed Rochester to La Crosse transmission line route, expressed concerns as to the environmental impacts of the proposed route. She urged an alternate routing along State Highway 52.[13]

E. *Remarks of Suzanne Rohlfing*

Suzanne Rohlfing, a member of the North Route Group and its representative on the Citizens Advisory Task Force for this routing, offered her reflections on the Task Force process. While complimentary of the work and management of the Task Force, Ms. Rohlfing expressed concern over the fact that there were no citizen-appointees to this Task Force and that many of the governmental entities invited to participate in the process did not do so. She likewise noted that benefits of the Task Force process were cramped by constraints outside of their control – specifically, real limits on the time within which the Task Force could render feedback, the availability of inputs from the agency and the value of the agency inputs that the Task Force did receive.[14]

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[11] Tr. at 42-53; Ex. 15.

[12] Tr. at 53-56; *see also In the Matter of the Application by Xcel Energy for a Route Permit for the Hampton-Rochester-La Crosse 345-kV Transmission Line Project*, OAH Docket No. 3-2500-21181-2, MPUC Docket No. E002/TL-09-1448.

[13] Tr. at 56-60.

[14] Tr. at 60-69. Drawing upon her experience as a member of the Citizens Advisory Task Force, Ms. Rohlfling also filed written comments urging improvements to the timelines, resources and notification processes for Task Force activities.

F. *Remarks of Monica Nigon*

Monica Nigon, a homeowner adjacent to the proposed Pleasant Valley wind project, opposes local review of such projects. She asserted that the local authorities are not sufficiently equipped to review such projects and cannot critically assess the proposals of wind power applicants. She expressed concern over the imbalances in negotiating power between homeowners and project developers, asserting that the Applicant in the Pleasant Valley matter did not fairly negotiate with her.[15]

G. *Remarks of Alan Muller*

Alan Muller, a resident of Red Wing, Minnesota, asserted that the OAH, OES, and the Commission are too deferential to applicants and are much less deferential to "the public interest in general or individual parties who have a concern." In his view, these agencies are "captured by the interests they were supposed to be regulating …." In particular, he expressed dismay that Commission members who have participated in the deliberations of the Upper Midwest Transmission Development Initiative are not obliged to later recuse themselves from decision-making in particular transmission line matters.

Mr. Muller recommended a number of reforms to improve the transparency of the permitting process, including: (1) notifying the general public of the pendency of proceedings earlier in the process – particularly as to the determination of whether a particular energy facility is needed; (2) improving the disclosures that are made to members of the public, so as to better communicate the implications of the matters being decided; (3) upgrading the roles of the DNR and the Minnesota Pollution Control Agency in the permitting process, on the grounds that they are better able to assess the public interest than the Department of Commerce; and (4) obliging documentation and disclosure of inter-agency communications regarding projects that are under review.[16]

Summary of Written Public Comments

A total of eighty-six written comments were submitted into the record.

A. *Assessments of the Siting Program from Goodhue County Residents*

Seventy-six of the written comments were submitted by persons who had earlier participated in the Commission proceedings *In the Matter of the Application for a Certificate of Need and Large Wind Energy System Site Permit for the 78 Megawatt*

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[15] Tr. at 69-72; *see 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,* MPUC Docket No. IP-6828/WS-09-1197.

[16] Tr. at 79-84.

Goodhue Wind Project in Goodhue County, OAH 8-2500-21395-2, MPUC Docket Nos. IP-6701/ CN-09-1186 and WS-08-1233.

As the Commission is aware, AWA Goodhue, LLC, proposes to site approximately 50 wind turbines within a 32,700 acre project area west of Goodhue, Minnesota.[17] In the public hearings on that application, several dozen commentators testified as to their concerns about the externalities of wind farm operations, Minnesota's standards for C-BED project eligibility and the transparency of Commission's processes. Their experiences as participants in the proceedings in that docket have prompted larger and still broader suggestions for reform.

Among the key critiques that these commentators would have the Commission address and resolve are: (1) the siting process is overly complex, insular and opaque – and seemingly favors the interests of energy insiders over the interests of the general public;[18] (2) there is a lack of uniform and accessible standards for the setbacks of wind turbines from adjacent structures and uses;[19] (3) there are tensions between the mandate to obtain larger shares of electric power from renewable sources of energy, and the obligation under Minn. Stat. 216E.02 to "minimize [the] adverse human and environmental impact[s]" of those energy projects;[20] (4) there are a number of barriers to the public's receipt of timely and accurate information on the siting of energy facilities;[21] (5) Commission and OES staff do not present themselves to the public as neutrals;[22] and (6) the standards for Community Based Energy Developments are too permissive and under-serve the affected public.[23]

With this feedback, the commentators from Goodhue County urge the Commission to revise its process so that it is clear that, in Commission decision-making, the siting preferences of individuals and communities are weighted as much as (or more than) the preferences of project applicants.

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[17] *See generally, In the Matter of the Application of Goodhue Wind LLC for a Certificate of Need for a 78 MW Wind Project and Associated Facilities in Goodhue County*, MPUC Docket No. CN-09-1186 (December 30, 2009) (E-Docket No. 200912-45523-01).

[18] *See, e.g.,* Comments of Wade Nygaard; Comments of Robin Nygaard; Comments of Erin Logan; Comments of Ann Buck; Comments of Scott Ralideh; and Comments of Jason Screffler.

[19] *See, e.g.,* Comments of Barbara Stussy; Comments of Eli Tri; and Comments of Andy and Katie Ryan.

[20] *See, e.g.,* Comments of Barbara Stussy; Comments of Summer Groth; and Comments of Thomas Gale.

[21] *See, e.g.,* Comments of Ann Buck and Comments of Brent Jacobson.

[22] *See, e.g.,* Comments of Bill O'Reilly; Comments of Ann Buck; Comments of Chris Buck; Comments of Quin Ordeson; Comments of Steve Groth; Comments of Lance Groth; Comments of Mark Hinrichs; Comments of Devyn Summers; Comments of Bruce Tren; Comments of Jason Screffler; Comments of Dave Hart; Comments of Christine Goddard; Comments of Andy and Katie Ryan.

[23] *See, e.g.,* Comments of Ann Buck and Comments of Donald Hinz.

B. *Written Comments of Paula Goodman Maccabee*

Paula Goodman Maccabee, an attorney in private practice, offered a number of suggestions for revising Commission processes. In the main, she urged a series of procedural changes that would make it easier for members of the public to access information on pending applications and to detail the environmental impacts of particular siting and routing decisions.

Specifically, Ms. Maccabee urges the Commission to: (1) blend the operations of the Energy Facility Permitting staff of the Department of Commerce with those of the Commission, so the Commission can better oversee and manage the environmental review of permit applications; (2) bolster the capabilities and numbers of Commission staff so as to better assess the contents of permit applications; (3) revise Minn. R. 7849.0120 so as to encourage the development and selection of facility alternatives that have fewer environmental impacts; (4) consolidate Certificate of Need and routing proceedings to improve public participation and the accuracy of data underlying decision-making; (5) upgrade the standards on completeness of permit applications so as to oblige an early filing of siting, routing and mitigation materials; (6) establish a single, unitary record from the date of scoping through the Commission's final decision; (7) revise Commission procedures so as to achieve greater consolidation of public hearings and contested case hearings; (8) provide resources for intervenor participation in certain dockets; (9) increase staff resources for oversight of applicant compliance with Commission orders; and (10) revise the resource planning process so as to emphasize goals other than meeting peak energy demands.[24]

C. *Written Comments of the Minnesota Transmission Owners*

The Minnesota Transmission Owners is an association of 21 firms that own or operate large energy generating facilities and high voltage transmission lines within the state of Minnesota. The MTO supports an effort by the Commission to update Minnesota Rules Chapters 7829, 7848, 7849 and 7850 so as to conform to the Commission's current practice and to eliminate ambiguities and inefficiencies in the application review process.

Specifically, it urges the Commission to: (1) revise Minn. R. 7850.2000 so as to expand the timelines for review of a site permit or route permit; (2) consolidate the various notices (in Chapters 7829 and 7850) for a certificate of need for high voltage transmission lines, into a single notice procedure; (3) repeal the requirement in Minn. R. 7850.1900 that every applicant must designate a preferred alternative among routing and siting options; (4) clarify which kind of changes to a project's design oblige a subsequent set of notices to the public; (5) streamline the line certification process so as to make it a viable, shorter and less-costly alternative to the certificate of need process – particularly when the Commission acts upon applications for low voltage and load

[24] *See, e.g.,* Comments of Paula Goodman Maccabee.

serving transmission lines; and (6) make such process revisions so as to ensure that more applications are processed within the six-month and one-year timeframes set forth in Minn. Stat. §§ 216E.03 and 216E.04.

D. *Written Comments of the Bemidji-Grand Rapids Project Owners*

The five utility companies that jointly applied for permits relating to the Bemidji-Grand Rapids 230 kV transmission line submitted comments in support of the reforms urged by the Minnesota Transmission Owners and urged the Commission to harmonize its procedures with the requirements of the National Environmental Protection Act. Specifically the BGR owners would favor more opportunities to undertake a single, consolidated environmental review that was responsive to the inquiries of state and federal reviewing agencies.

Dated: March 4, 2010

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Transcribed (Shaddix & Associates).

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March 4, 2011

Deborah R. Pile
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Minnesota Office of Energy Security
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St. Paul, MN 55101-2198

Re: ***In the Matter of the 2010 Annual Hearing on the Power Plant Siting and Transmission Line Routing Program***
OAH 8-2500-21746-2; MPUC No. E999/M-10-222

Dear Ms. Pile:

Enclosed herewith and served upon you by mail is the Administrative Law Judge's **Report to the Commission** and **Certificate of Hearing Record** in the above-entitled matter. Also enclosed is the official record. Our file in this matter is now closed.

Sincerely,

ERIC L. LIPMAN
Assistant Chief Administrative Law Judge

Telephone: (651) 361-7842

ELL:dsc
Enclosure
cc: Dr. Burl W. Haar
Attached Edockets Service List

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CERTIFICATE OF SERVICE

In the Matter of the 2010 Annual Hearing on the Power Plant Siting and Transmission Line Routing Program	OAH Docket No.: 8-2500-21746-2 MPUC No. E999/M-10-222

Denise Collins, certifies that on the 4th day of March, 2011, she served a true and correct copy of the attached **REPORT TO THE COMMISSION** and **CERTIFICATE OF HEARING RECORD** by placing it in the United States mail with postage prepaid, addressed to the following individuals:

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