



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street  
Saint Paul, Minnesota 55101

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

February 27, 2013

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

Executive Secretary Burl W. Haar  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 Seventh PI E  
Saint Paul, MN 55101

Re: *In the Matter of the 2012 Annual Power Plant Siting*; OAH 65-2500-30183

Dear Executive Secretary Haar:

Enclosed and served upon you by mail or courier service is the REPORT TO COMMISSION in the above-entitled matter. Also enclosed is the official record which includes a transcript of December 21, 2012 hearing. Our file in this matter is now being closed.

Sincerely,

A handwritten signature in cursive script that reads "Ann C. O'Reilly".

ANN C. O'REILLY  
Administrative Law Judge

Telephone No. (651) 361-7844  
Fax No. (651) 361-7936

ACO, njh

Enclosures

cc: All Parties as listed on the PUC list

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Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Julia	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	No
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	No
Haar	Burl W.	burl.haar@state.mn.us	Public Utilities Commission	Electronic Service	No
Lindell	John	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	Electronic Service	No
O'Reilly	Ann	ann.oreilly@state.mn.us	Office of Administrative Hearings	Electronic Service	No
Schrenzel	Jamie	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	Electronic Service	No

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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the 2012 Annual Hearing  
on the Power Plant Siting and  
Transmission Line Routing Program

**REPORT TO THE COMMISSION**

On or about November 15, 2012, the Minnesota Public Utilities Commission (Commission) requested that the Office of Administrative Hearings conduct, on its behalf, the 2012 Annual Hearing on the Power Plant Siting Act Programs, pursuant to Minn. Stat. § 216E.07 (2012). Administrative Law Judge Ann O'Reilly conducted the public hearing at 1:00 p.m. on December 21, 2012, at the Saint Paul offices of the Minnesota Public Utilities Commission.

Following a 42-day public comment period, the hearing record closed at 4:30 p.m. on February 1, 2013.<sup>1</sup>

The Annual Hearing has two key purposes. First, 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. Second, the annual hearing affords interested persons an opportunity to be heard regarding the Commission's activities, duties, and/or policies pursuant to the Power Plant Siting Act (PPSA).<sup>2</sup>

**NOTICE OF THE ANNUAL HEARING**

Minnesota Statutes Section 216E.07 requires that the Commission hold a public hearing each year to afford interested persons an opportunity to be heard on any matter relating to the siting of large electric generating power plants and the routing of high-voltage transmission lines. At the meeting, the commission shall advise the public of the permits issued by the Commission in the past year. The Commission must provide at least ten (10) days, but no more than 45 days' notice, of the annual meeting, along with a tentative agenda for the hearing. The hearing notice must be mailed or served electronically to those persons who have requested notice and must be published in the *EQB Monitor* and on the Commission's calendar.<sup>3</sup>

<sup>1</sup> *Public Hearing Transcript*, OAH Docket No. 2500-30183, at 6-7; Ex. 11.

<sup>2</sup> See Minnesota Statutes Chapter 216E (2012); Minnesota Rules 7850.1000 to 7850.5600 (2012).

<sup>3</sup> See Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2 (2012).

On December 4, 2012, the Commission served notice of the annual hearing, with a tentative agenda, to those persons who requested notice.<sup>4</sup> The notice was published in the *EQB Monitor* on December 4, 2012, and was posted on the Commission's web calendar throughout notice and public comment periods.<sup>5</sup>

Approximately 23 members of the public (not including staff of the Department of Commerce, the Department of Natural Resources, or the Commission) attended the hearing.<sup>6</sup> Eight (8) of those individuals gave oral testimony during the proceedings (some of which also provided written comments), and eleven (11) other individuals provided written comments, as detailed below.<sup>7</sup>

## **INTRODUCTIONS AND COMMENTS FROM PUC, DOC, AND DNR STAFF**

### *A. Brett Eknes, Public Utilities Commission<sup>8</sup>*

Bret Eknes, the manager of the Public Utility Commission (PUC) Energy Facilities Unit, explained that the Power Plant Siting Act (PPSA) is administered jointly by the Commission and the Department of Commerce's Energy Facility Permitting Unit. Mr. Eknes stated that the Commission's Energy Facilities staff manages and provides general oversight of applications to construct or modify large energy facilities in Minnesota, including power plants, transmission lines, wind power generation plants, and gas and petroleum facilities. As part of the project review process, Commission staff will prepare a document summarizing the positions of the parties and participants, the contents of the record, and the implications of the various options for each project to guide and advise the Commission. The Commission's procedures incorporate compliance with the Minnesota Environmental Policy Act, and provide for broad public participation by requiring timely public notice and opportunity for public comment.

Mr. Eknes introduced Tracy Smetna, the Commissioner's Public Advisor. The Public Advisor position was recently established by the Commission's Consumer Affairs Office to improve public outreach and assist the public in effectively participating in Commission hearings.

Finally, Mr. Eknes explained that the Commission recently issued a notice soliciting comments on Minnesota Rules Chapters 7849 and 7850, which govern large electric generating facilities and high-voltage transmission lines. The Commission is considering rule amendments to align the procedures of the two chapters, clarify processes, resolve timing conflicts, maximize public participation, and incorporate new statutory criteria for demonstrating that a project is needed.

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<sup>4</sup> Ex. 11.

<sup>5</sup> See, Ex. 2 and <http://www.puc.state.mn.us/puc/calendar/index.html>.

<sup>6</sup> Ex. 5.

<sup>7</sup> *Id.*; See *Public Hearing Transcript* and Exs. 3, 4, 6, 7, 8, 9, 10, 12, 147, 15, 16, 17, 18, and 19.

<sup>8</sup> *Public Hearing Transcript* at 9-11.

B. *Deborah Pile, Department of Commerce*<sup>9</sup>

Deborah Pile, a supervisor with the Minnesota Department of Commerce (DOC) Energy Facility Permitting Unit (EFP), explained that the EFP conducts environmental review required for proposed energy facilities in Minnesota, and serves as technical staff to the Commission with respect to permitting and regulating energy facilities, as authorized by the PPSA. In its role as technical advisor to the PUC, the EFP prepares guidance materials, conducts research into energy issues, and maintains a website to provide the public with information about projects, processes, and issues involving energy.

Ms. Pile presented the "Power Plant Siting Act 2012 Year in Review," a document describing the EFP's work in 2012. In 2012, the EFP staff assisted the Commission in permitting 13 energy facilities (nine transmission lines and four wind farms); prepared six environmental review documents; and performed annual compliance reviews for 15 projects. In addition, EFP staff provided numerous pre-construction and pre-operation compliance reviews. Ms. Pile provided a list and description of nine (9) permitted transmission line projects; four (4) transmission line route permit amendments or alteration requests; four (4) permitted wind projects; and 19 wind site permit amendments or transfer requests. Six (6) additional compliance reviews were anticipated before the end of 2012.

Ms. Pile described the focus areas for the EFP in 2012. These areas included: (1) development of an integrated compliance system; (2) cooperation with the U.S. Fish and Wildlife Service and Minnesota Department of Natural Resources (DNR) on avian and bat issues; (3) cooperation with the Minnesota Pollution Control Agency (MPCA) on noise study protocols related to wind projects; (4) preparation of guidance documents for transmission line plans and wind preconstruction compliance; and (5) improvement in the use of Geographic Information System (GIS) tools for environmental reviews.

According to Ms. Pile, in 2013, the EFP will focus on more clearly delineating its role in the siting process and updating its procedures. This will include active participation in the rulemaking process described by Mr. Eknes. The EFP seeks to promote inclusiveness in the hearing processes, expand outreach to local governments, and establish communication routes with utilities, permittees, and wind trade associations. As in 2012, the EFP seeks in increase staff capabilities and implementation of GIS tools.

Ms. Pile provided a list of six (6) energy projects currently under review, as well as a list of anticipated energy projects and petitions for amendments. Ms. Pile noted that annual compliance reviews will be completed for all remaining active energy facility dockets.

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<sup>9</sup> *Public Hearing Transcript at 11-17; Ex. 1.*

*C. Jamie Schrenzel, Department of Natural Resources*<sup>10</sup>

Jamie Schrenzel, Principal Planner for the Minnesota Department of Natural Resources (DNR) Environmental Review Unit, explained the DNR's participation in the Power Plant Siting and Transmission Line Routing Program (Program); the highlights of its work with the DOC and PUC in 2012; its involvement in transmission line project review; its involvement in wind project review; and future areas of focus for the DNR with respect to the Program.

Ms. Schrenzel first explained the DNR's involvement in the Program through licensing and permitting, as well as the provision of input to the DNR during project planning, public comment periods, meetings, and project development and construction.

Next, Ms. Schrenzel described the DNR's involvement in the Program in 2012. Ms. Schrenzel praised the interagency coordination in 2012 between the DNR and the DOC and PUC. Two particular highlights included: (1) a state wildlife grant that was funded to research the effects of wind energy on bats and birds; and (2) the preparation of a draft Avian and Bat Survey Protocols for Large Wind Energy Conversion Systems in Minnesota.<sup>11</sup>

With respect to transmission line review, the DNR expressed concern about "the loss of public resources from some transmission projects as they proceed into construction." While the DNR recognizes that there is no perfect place to locate a transmission line, the DNR seeks to work more with energy project developers, the PUC, and the DOC's EFP earlier in the project review process to analyze the environmental, social, and economic impacts of proposed routes. The DNR contends that the permitting process is most thorough when many route alternatives are analyzed and considered, so that all parties in the process can identify the project impacts. This is most possible when project developers, the PUC and the EFP coordinate with the DNR early in the process.

With respect to wind energy projects, the DNR looks forward to providing technical guidance regarding wildlife protocols. The DNR seeks to encourage consistent data collection, develop predictable guidance for the energy industry, and understand the impact on wildlife from individual energy projects, as well as the cumulative impact caused by state renewable energy mandates.

Future areas of focus for the DNR include: (1) developing a program to reduce the spread of terrestrial and aquatic invasive species; and (2) working closer with transmission project developers as projects proceed into construction. Ms. Schrenzel explained that transmission lines present a "highway" for the transit of invasive species, and that such threats need to be addressed. Accordingly, Ms. Schrenzel explained the need for further coordination with project developers, the PUC, and the EFP.

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<sup>10</sup> Id at 18-24; ;Ex. 2.

<sup>11</sup> Ex. 13.

## **SUMMARY OF PUBLIC HEARING TESTIMONY AND WRITTEN COMMENTS SUBMITTED**

The following individuals provided oral testimony at the Public Hearing on December 21, 2012:

Carol Overland, Esq.  
Alan Muller  
Tim Langdon  
Andy Sandstrom  
Barbara Stussy  
Marie McNamara  
Bob Rosenquist  
Susanne Rohlfiing

Written comments were received within the comment period ending at 4:30 p.m. on February 1, 2013, from the following individuals:

Carol Overland, Esq.  
Barbara Stussy  
Marie and Bruce McNamara  
Rob Rosenquist  
Susanne Rohlfiing  
Donald Berry  
Geraldine Yliniemi  
Alice Reimann  
Jane and Virgil Fuchs  
Tom Vouk  
Kristen and John Busse  
Rochelle Nygaard  
Michelle Sandstrom  
Doug McKibben

Written comments received after the end of the comment period were submitted by Marie McNamara (additional written comments) and Jean Scheu.

The written and oral comments received by 4:30 p.m. on February 1, 2013, are summarized below.

## ***Summary of Public Testimony***

NOTE: Where individuals submitted both oral testimony and written comments, those individuals' oral and written comments are summarized together below, as they were, in most all cases, duplicative.

### ***A. Testimony and Written Comments from Carol Overland<sup>12</sup>***

Carol Overland, an attorney, outlined a number of critiques of the Power Plant Siting Act and the transmission line routing program, the PUC, the DOC's EFP, and the administrative rule making process. Ms. Overland submitted both oral testimony and written comments, which are summarized together herein.

Overall, Ms. Overland argues that the PUC, the DOC, and the PPSA program are not well-structured to provide timely, accurate, or complete information to members of the public; and, as a result, the law and the agencies do a poor job in protecting the public interest.

Ms. Overland's written and oral comments addressed the following general areas: (1) the need for rule-making or rule changes to Minnesota Rules Chapters 7829 and 7850; (2) the need for early public involvement in the rule-making process; (3) the need for the creation of an executive agency that represents solely the public interest, such as a "Department of Public Advocacy;" (4) the need for intervenor funding to level the playing field for individual stakeholders; (5) the need for greater involvement of specialized government agencies (other than the DOC) in the energy siting and transmission route processes; and (6) the need to include wind projects in the PPSA or combine Minnesota Statutes Chapters 216E (electric power facilities) and 216F (wind energy).

First, Ms. Overland expressed concern over the proposed rule-making process described by Mr. Eknes, and the importance of public participation in that process. Ms. Overland explained that the current rule-making process does not allow the public to effectively participate. Under the current process, when a Notice of Intent to Adopt Rules is published, the public is not informed as to what specific changes or rules the agency is considering adopting. Thus, it is difficult for members of the public to effectively participate when they can only provide general comment. It is only when the proposed rules are published for adoption that the public is able to comment on the specific rules and "tweak" changes. Ms. Overland suggests that the public should have a more active role and be better heard in the pre-rulemaking process. According to Ms. Overland, a change to the overall rulemaking process is necessary so that the public is involved in the formation of the rules or rule changes, as opposed to merely commenting on rules already developed by the agency.

In her written comments, Ms. Overland proposes specific changes to Minnesota Rules Chapter 7829 and 7850, related to utility proceedings, siting, routing, and

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<sup>12</sup> *Public Hearing Transcript* at 26-38; Ex. 12.

permitting. Ms. Overland's proposed rule changes address some of the concerns raised in her oral and written comments.<sup>13</sup>

Next, Ms. Overland recommends the creation of an executive agency such as a "Department of Public Service" or "Department of Public Advocate," which could solely represent the public interest in matters such as the PUC siting and routing program. Ms. Overland suggests that the DOC does not necessarily represent the public interest, but rather, it represents commercial interests; specifically, the interests of wind and power companies. Thus, Ms. Overland argues, a public advocate is needed to help individuals navigate and play a meaningful role in the expensive and complex utility permitting process.

In addition to her suggestion for a public interest agency, Ms. Overland advocates for intervenor funding to facilitate public participation. Ms. Overland explains that to be effective participants in PUC matters, members of the public need significant financial and technical resources. To "level the playing field" and provide for effective public participation, individual stakeholders need the financial resources to retain experts and specialized legal counsel, perform testing, and obtain consultants. According to Ms. Overland, intervenor compensation would allow individual stakeholders and members of the public the ability to fairly compete with well-funded and well-organized energy producers.

Ms. Overland expressed concern about the role of the DOC in PUC proceedings. According to Ms. Overland, the DOC is not the appropriate agency to be conducting environmental reviews or to be providing technical assistance in PUC matters because the DOC: (1) has an economic/commercial focus, not an environmental one; (2) has an inherent conflict of interest due to its commercial focus; and (3) lacks the necessary expertise and specialized knowledge to fully review those issues. Instead, Ms. Overland argues, the PUC should look to other specialized agencies to provide the oversight, technical support, and expertise it needs in siting and routing cases. These agencies include the Minnesota Pollution Control Agency (MPCA), the Department of Natural Resources (DNR), and the Minnesota Department of Transportation (MnDOT). Ms. Overland explained that other governmental agencies can better provide the PUC with the assistance it requires, and would be less subject to control by the commercial wind and power producers. Ms. Overland acknowledges that this would require legislative enactment. However, she suggests that the PUC involve these agencies earlier in the siting and routing process to provide less biased information and more accurate technical support.

By way of examples, Ms. Overland described situations in which the DOC: (1) did not carefully vet information submitted by the power companies when performing environmental reviews; and (2) considered routes that were proposed by the energy

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<sup>13</sup> It should be noted that this docket is solely the Annual Hearing on the Power Plant Siting and Transmission Line Routing Program, not a rulemaking docket. Accordingly, while Ms. Overland's comments are generally summarized herein, this is not the proper docket or venue for a rulemaking petition or rulemaking comments.

companies late in the process and not included in the Environmental Impact Study (EIS) (e.g., CapX in Hampton and Brookings). According to Ms. Overland, the result put individual stakeholders and landowners at a significant disadvantage in defending against route alternatives that were presented late in the schedule of proceedings.

Finally, Ms. Overland asserts that wind projects should not be exempt from the PPSA, as they are large electric-generating projects that should be subject to greater regulation, including, but not limited to, environmental review and Environmental Impact Studies. Ms. Overland suggests incorporating wind projects into the PPSA or combining Minnesota Statutes Chapters 216E and 216F. In summary, Ms. Overland argues that there is no reason that wind farms should be exempt from the same regulations and procedures to which other large-scale energy-producing projects are subjected.

B. *Testimony from Alan Muller*<sup>14</sup>

Alan Muller, a resident of Red Wing, Minnesota, expressed concerns regarding: (1) public access to the hearing transcript in this matter; (2) the close connection between the PUC and the industry groups that it regulates; (3) public access to draft Avian and Bat Survey Protocols developed by the DNR; (4) the need for a public advisor position at the PUC or the establishment of a Department of Public Service; and (5) the propriety of what appears to be a delegation of staff support by the PUC to the DOC. Mr. Muller's over-arching concerns relate to the close relationship between the PUC and EFP and the industry groups that those agencies are to be regulating; as well as what Mr. Muller describes as a "trend" of reducing public participation in siting and routing proceedings.

Mr. Muller first expressed the need for public access, via the eDocket system, to the transcript of the Annual Hearing on the Power Plant Siting and Transmission Line Routing Program. Mr. Muller argues that because the State of Minnesota has paid for the preparation of the transcript of the hearing, the transcript should be made publicly available on the eDocket system.

Mr. Muller also requested public access to the DNR's draft Avian and Bat Survey Protocols, which have been shared by the PUC and EFP with wind developers. In response, Ms. Schrenzel agreed to file a copy of the draft protocols via eDockets. A copy of the same was marked as Exhibit 13 and was made a part of the official hearing record. Mr. Muller cited the lack of public eDocket access to the hearing transcript, and the EFP's sharing of DNR draft protocols with wind developers, but not the public, as examples of how the PUC is less concerned with public involvement in the process and is more concerned about serving energy industry interests.

Mr. Muller cautioned against what he views as the increasingly cozy and inappropriate relationship between the PUC and the EFP and the energy industry. Mr. Muller explained that such closeness affects the agencies' neutrality and subjects the

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<sup>14</sup> *Public Hearing Transcript* at 38-57.

agencies to undue influence from the very industries that they are to be regulating. Mr. Muller cited examples of PUC members serving on energy industry advocacy groups, as well as the EFP's stated 2013 focus area of establishing "route communication mechanisms" with "utilities, permittees, and wind trade associations," as opposed to other stakeholders. Mr. Muller noted that the EFP did not include a focus area to establish "route communication mechanism" with environmental groups, community organizations, public advocacy groups, or individual stakeholders.

Mr. Muller explained that because staff support for the PUC is provided, in large part, by the DOC, a business-focused agency, there is a fundamental bias toward applicants, business entities, and the energy industry, which, Mr. Muller asserts, trumps public interests, environmental interests, and public health concerns. Mr. Muller cautions that the PUC's apparent delegation of power to the EFP interferes with the PUC's credibility and significantly reduces its neutrality.

To counter these problems, Mr. Muller suggests that the PUC obtain its technical and staff support from other agencies with specialized knowledge, less bias, and more objectivity. In addition, Mr. Muller advocates for the appointment of a public advisor at the PUC, as well as the creation of a Department of Public Service, to enable members of the public to participate in the siting and routing process in a substantial, meaningful, and effective way. Mr. Muller explained that in order for the public to effectively participate in the process, the public needs an advocate (ideally, an executive agency) to provide information, advice, advocacy, and assistance.

### C. *Testimony from Tim Langdon*<sup>15</sup>

Tim Langdon, a resident of Cannon Falls, Minnesota, described his recent experience with the routing of high voltage lines in his area. In short, Mr. Langdon views the PUC siting and routing process as "extremely biased for the applicant." Mr. Langdon cites to examples where routes were approved by the PUC that were not fully reviewed or addressed in the EIS, and were first identified by the applicant late in the permitting process, thereby denying public stakeholders the opportunity to fully oppose those routes. Mr. Langdon asserts that there have been instances where routes were first made public on the date of the hearing or shortly before. As a result, Mr. Langdon suggests the need for procedures that provide for advanced notice to the public (particularly affected residents) of all possible identified routes. Such notice must give all interested parties adequate time and opportunity to fully identify the impacts of those routes.

In addition, Mr. Langdon expressed the need for the PUC to independently verify information provided by applicants instead of blindly accepting the information. Mr. Langdon suggests that a public advisor position be created that provides members of the public a resource in which to ask questions, obtain information, and receive advice and counsel. This public advisor should also be charged with the duty of independently

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<sup>15</sup> *Id* at 58-61.

verifying the information provided by applicants so that the public and the PUC are not misled by inaccurate information or omissions.

D. *Testimony from Andy Sandstrom*<sup>16</sup>

Andy Sandstrom, a resident of Cannon Falls, Minnesota, believes energy companies and the PUC are too closely aligned, which, Mr. Sandstrom contends, affects the agency's neutrality and negatively impacts the public. Mr. Sandstrom's experience with the routing of high voltage transmission lines in his area left him with the impression that the PUC does not listen to the members of the public that come before it, and that the PUC makes its decisions "behind closed doors," instead of "out in the open" with full disclosure to the public. Mr. Sandstrom cites an example of a PUC member sleeping during public testimony at one particular hearing. Mr. Sandstrom argues that affected landowners and residents are not fully or timely informed of the possible routes for transmission lines, and that routes identified late in the process are allowed by the PUC to be considered, despite lack of notice to affected parties. Mr. Sandstrom expressed concern that this occurs because the PUC has allowed applicants to submit "sloppy paperwork" or incomplete applications that eventually deprive affected landowners the opportunity to oppose potential routes of which they were not initially advised.

Mr. Sandstrom advocates for more transparency in the routing and siting process, whereby all information that the PUC and EFP consider in their decisions be made easily available and accessible to citizens. Mr. Sandstrom explains that the PUC's lack of communication with, and lack of accountability to, the public results in distrust and ultimately affects the PUC's credibility.

Mr. Sandstrom asserts that ordinary citizens do not have experience or knowledge about the PUC or its procedures. As a result, it is very difficult for unrepresented individuals to maneuver through the PUC process effectively. Mr. Sandstrom recommends the appointment of a public advocate to assist individual stakeholders and provide information to the public. Mr. Sandstrom asserts that such a resource is currently lacking at the PUC.

E. *Testimony and Written Comments from Barbara Stussy*<sup>17</sup>

Barbara Stussy, a resident of Zumbrota, Minnesota, submitted both written and oral comments. Ms. Stussy's comments relate mainly to a May 22, 2009, Minnesota Department of Health (MDH) study entitled, "Public Health Impacts of Wind Turbines." According to Ms. Stussy, this report was prepared by the MDH in response to a request by the Department of Commerce Office of Energy Security to evaluate the possible health effects associated with low frequency vibrations and sound and shadow flicker arising from large wind energy conversion systems. Ms. Stussy notes that this report was the subject to public comment in 2009 under eDocket No. 09-845.

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<sup>16</sup> *Id* at 62-66.

<sup>17</sup> *Id* at 66-70; Ex. 14.

According to Ms. Stussy, the report states that:

Low frequency noise from a wind turbine is generally not easily perceived beyond one-half mile. However, if a turbine is subject to aerodynamic modulation because of shear cause by terrain (mountains, trees, buildings) or different wind conditions through the rotor plane, turbine noise may be heard at greater distances.

Based upon the MDH report, Ms. Stussy expressed concern that the PUC has not considered the comments posted in eDocket No. 09-845, and has not considered the contents of the MDH report when approving wind turbine sites. Ms. Stussy further questioned why the PUC continues to approve the siting of wind turbines closer than one-half mile from homes.

Ms. Stussy contends that the report recommends that "potential impacts from shadow flicker and turbine visibility should be evaluated." Ms. Stussy questioned whether or not such study has been done and whether the PUC has considered these issues.

Ms. Stussy urges the PUC to: (1) consider the MDH report in its consideration of siting of wind turbines; (2) deny the siting of wind turbines within one-half mile of homes; and (3) consider further study on the impacts of shadow flicker and turbine visibility.

Finally, Ms. Stussy questions the PUC's motivation in scheduling its annual siting hearing on the afternoon of Friday, December 21, 2012. Ms. Stussy contends that the date and time, being so close to the Christmas holiday, results in low public turn-out or involvement. Ms. Stussy recommends that the public hearings be scheduled in January following the year in review.

F. *Testimony and Written Comments from Marie McNamara*<sup>18</sup>

Marie McNamara, a resident of Goodhue County, provided both written and oral comments, which are summarized together herein. Ms. McNamara's comments addressed the following general issues: (1) the apparent immunity of wind energy from prosecution under federal animal protection laws; (2) the need for penalties for applicants that provide incomplete, inaccurate or untimely information on permit applications; (3) the need for rulemaking and/or legislation to include large wind energy conversion systems in the PPSA, as well as agency rules applying to permitting and siting; (4) the need for better public resources, education, advocacy, notification, and communication by the PUC and EFP; (5) the need for a public hearing on, and PUC consideration of, the health effects of large wind turbines; (6) the need for verification of site control prior to permitting; (7) the provision of developer and owner contact

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<sup>18</sup> *Public Hearing Transcript* at 70-83; Ex. 3. Bruce McNamara joins in the written comments contained in Ex. 3.

information to affected parties; (8) the need for greater transparency by the PUC and EFP; and (9) the need to change the annual PPSA hearing date.

Ms. McNamara first asserts that wind energy has been granted unofficial immunity from prosecution under both the federal Migratory Bird Treaty Act and the Eagle Protection Act, which prohibit the harm or killing of certain bird species. Ms. McNamara argues that large wind projects have a negative impact on the avian population in Minnesota, and that the Minnesota and U.S. Attorney General's offices should be investigating violations of these Acts by wind companies. In addition, Ms. McNamara recommends that the PUC and EFP work with the DNR and U.S. Fish & Wildlife Service (agencies with expertise in environmental and animal protection) to evaluate and consider the impacts of energy projects, including wind projects, on the environment and the state's natural resources.

Ms. McNamara cautions against the PUC's acceptance of inaccurate, incomplete, unvetted, or untimely filings by permit applicants and energy companies. Ms. McNamara warns that misinformation, omissions, and untimely filings result in bad decisions for the public as a whole. To counter this issue, Ms. McNamara recommends that the PUC adopt rules that provide for penalties for inaccurate, incomplete, or untimely applications and filings. Ms. McNamara explains that there is a greater need for accountability from applicants and energy companies. To that end, Ms. McNamara urges the verification of site control prior to permitting for all large electric generating facilities, including wind projects; and a requirement that supply developers and owners provide accurate and updated contact information to residents within the footprint of large wind projects.

Ms. McNamara further advocates for the inclusion of large wind energy conversion systems in the PPSA, as well as the initiation of rulemaking proceedings to adopt regulations to apply to wind energy projects. According to Ms. McNamara, there are no regulatory standards established for wind projects over 25 megawatts. Thus, there is a need for permitting and siting regulations, as well as requirements for Environmental Impact Studies for these large wind projects. To illustrate her point, Ms. McNamara notes that the EFP hearing agenda refers repeatedly to wind projects, but then the EFP claims that public comment on wind projects is misplaced at the PPSA annual hearing.

Ms. McNamara notes that large wind energy conversion systems are large energy generating facilities and should be subject to the same regulation as other large energy generating facilities. More specifically, Ms. McNamara argues that because wind projects have significant impacts on the environment, they need to be subject to Environmental Impact Studies like other large electric generating facilities.

Ms. McNamara contends that valuable information collected on the health effects of large wind turbines in PUC eDocket No. 09-845 has been largely ignored, and that the docket sits open without meaningful action or consideration by the PUC. Ms. McNamara recommends that the PUC seek additional impartial scientific study on this

issue, as well as other environmental issues. To that end, Ms. McNamara urges the PUC and EFP to solicit and consider information available from other state and federal agencies with expertise in health, environment, and natural resources, as part of its decision-making process.

Ms. McNamara recommends the establishment of a repository published on the PUC website for studies and information evaluated or considered by the PUC and EFP as part of their review and decision-making process. Ms. McNamara explains that the public is entitled to know what information the PUC and EFP are relying on when making their decisions. According to Ms. McNamara, this would increase the transparency and boost the credibility of both agencies.

Overall, Ms. McNamara sees a need for the PUC to provide better notification, information, education, and advocacy to the public about the PUC and its processes, and to increase citizen participation in those processes. Because of the complexities involved in the PUC subject matter, Ms. McNamara reasons that there is a need for the PUC, as well as appointed public advocates, to assist citizens in navigating through the process. She recommends the PUC include more detailed information on its website about its processes and present it in a way that is more understandable to average citizens.

Finally, Ms. McNamara questions the PUC scheduling of the annual hearing on Friday, December 21, 2012. She suggests that PPSA annual hearings be scheduled in January following the year in review to allow for a complete “look back” period, and that such hearings be scheduled for early evening hours to accommodate the greatest number of public participants.<sup>19</sup>

#### G. *Testimony and Written Comments from Bob Rosenquist*<sup>20</sup>

Bob Rosenquist is a resident of Mazeppa, Minnesota. Mr. Rosenquist provided both oral testimony and written comments, which were essentially identical and are summarized herein. Mr. Rosenquist’s comments consisted of four specific recommendations to the PUC.

First, Mr. Rosenquist referenced a 2011 National Association of Regulatory Utility Commissioners (NARUC) study entitled, “Assessing Sound Emissions from Proposed Wind Farms & Measuring the Performance of Completed Projects.” According to Mr. Rosenquist, that study advises that any new wind projects maintain a mean sound level of 40 dBA or less outside all residences. Yet, Mr. Rosenquist asserts, the PUC’s

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<sup>19</sup> Ms. McNamara provided additional written comment on February 1, 2013, marked as Exhibit 20. However, such comments were sent via email at 5:01 p.m. on February 1, 2013, and were, thus, received after the close of the comment period. The content of Exhibit 20 is essentially the same as the comments made by Ms. McNamara in her oral testimony and written comments submitted into the record at the hearing as Exhibit 3.

<sup>20</sup> *Public Hearing Transcript* at 83-86; Ex. 4.

nighttime standard for wind projects allows 50dBA. Mr. Rosenquist, thus, urges the PUC to adopt a 40 dBA standard in its permitting of wind projects.

Second, Mr. Rosenquist recommends that the PUC immediately adopt the DNR's draft Avian and Bat Survey Protocols for Large Wind Energy Conservation Systems in Minnesota. Mr. Rosenquist asserts that there is an urgent need for data specific to Minnesota related to the impacts of wind projects on these species, and that such protocols will assist in obtaining local studies that would be pertinent to the PUC's evaluation of wind projects.

Third, Mr. Rosenquist explained that 2007 renewable energy legislation in Minnesota will result in a vast "sprawl" of industrial wind turbines in the state. However, Environmental Impact Studies are not required of these projects. According to Mr. Rosenquist, given the likely proliferation of wind farms in Minnesota in coming years, the PUC needs to know the environmental impact of these facilities. Mr. Rosenquist thus recommends a statewide EIS of the 2007 Minnesota renewable energy legislation.

Fourth, Mr. Rosenquist argues that because all industrial wind projects receive public funding in the form of subsidies or CBED rate money, there should be no "trade secrets" withheld from taxpayers.

#### H. *Testimony and Written Comments from Suzanne Rohlfiing*<sup>21</sup>

Suzanne Rohlfiing, a resident of Rochester, Minnesota, submitted both oral testimony and written comment, which were essentially identical and are summarized together herein. Ms. Rohlfiing participated in the CapX 2020 (eDocket No. 09-1448) and related her comments to that experience.

First, Ms. Rohlfiing reminded the PUC of its legislative directive to conserve resources, minimize environmental impact, minimize human settlement and other land use conflicts, and ensure the state's electric energy security through efficient, cost-effective power supply and infrastructure. Ms. Rohlfiing also cited Minn. Stat. § 116D.03, subd. 2 (5), related to action by state agencies.

Ms. Rohlfiing asserted that certain energy projects threaten and compromise the environment. To that end, Ms. Rohlfiing cautions that the PUC must carefully balance environmental protection with the need for renewable energy. Ms. Rohlfiing expressed concern that in a recent large wind docket, U.S. Fish & Wildlife and DNR input was completely ignored by the PUC and EFP. Ms. Rohlfiing urged the PUC to value long-term sustainability for the environment over short-term gain or profit for energy companies.

Ms. Rohlfiing asked the PUC to "hear the voice of the citizen" and take its time in the siting and routing permit process to ensure thoughtful and careful consideration of all aspects of the PUC's legislative mandates. Ms. Rohlfiing noted that "streamlining"

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<sup>21</sup> *Public Hearing Transcript* at 87-98; Ex. 15.

rules and procedures results in a faster process. However, Ms. Rohlifing asserts, faster is not necessarily better. Ms. Rohlifing cautioned that time is necessary for the public to engage, organize, and fully participate in the process. According to Ms. Rohlifing, it takes time to create a full and complete record, including a record that fully reflects the voice of the public and the expertise of other agencies. Ms. Rohlifing noted that a full and complete record results in better decision-making.

Ms. Rohlifing thanked the PUC for its thoughtful consideration of projects in 2012, but encouraged the PUC to increase public involvement and transparency in its decision-making process. Ms. Rohlifing explained that the public needs to know they are heard and that all pertinent facts are collected and thoughtfully considered by the PUC in order for the PUC to earn the public's trust and gain credibility. Ms. Rohlifing encouraged open dialogue with citizens and urged the PUC to continue to work with other agencies, such as the DNR, on future projects.

Finally, Ms. Rohlifing identified the need for public advisors and advocates to assist citizens in navigating through the PUC process. Ms. Rohlifing noted that the PUC process is very expensive to participate in as an individual. Thus, Ms. Rohlifing explained, there is a need for intervenor compensation to level the playing field for citizens whose interests are often in conflict with large, well organized energy companies.

### ***Summary of Additional Written Public Comments***

The following is a summary of written comments submitted during the public comment period.

#### ***A. Comments from Don Berry<sup>22</sup>***

Don Berry, a resident of Greenwood, Minnesota, submitted written comment specific to the Xcel Energy transmission line that is proposed along Minnetonka Road in Greenwood, Minnesota. Mr. Berry asserts that there are several alternative routes that will have less environmental impact. Mr. Berry requests that the lines not be placed along Minnetonka Road or that they should be buried. Mr. Berry also expressed objection about the date of hearing being the Friday before the Christmas holiday, making it difficult for people to attend.

#### ***B. Comments from Hugo and Geraldine Yliniemi<sup>23</sup>***

Hugo and Geraldine Yliniemi, residents of Dennison, Minnesota, wrote that they have "no problem" with power lines going through their property as they are planning on selling their home.

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<sup>22</sup> Ex. 6.

<sup>23</sup> Ex. 7.

C. *Comments from Alice Reimann*<sup>24</sup>

Alice Reimann, address unknown, expressed concern about the date and time of the public meeting being the Friday afternoon before a holiday weekend. Ms. Reimann asserts that the scheduled date of the hearing was a “dirty trick” on the part of the PUC to reduce public participation.

Ms. Reimann implored the PUC to consider alternative routes for the Xcel transmission lines in the Lake Minnetonka area. Ms. Reimann suggested a route along Vine Hill Road or Highway 101, or the burying of power lines. Ms. Reimann expressed concern over the environmental impact of power lines in the picturesque Lake Minnetonka area.

D. *Comments from Jane and Virgil Fuchs*<sup>25</sup>

Jane and Virgil Fuchs, residents of Belgrade, Minnesota, expressed complaints about Xcel Energy allegedly trespassing on his property. The Fuchs explained that Xcel workers constructing power lines, entered onto his property without permission on May 22, 2012, causing \$3,000 in crop damage. The Fuchs state that despite a police report and a written agreement from Xcel to stop entering onto his property, Xcel continued to “trespass” across their property in June 2012 to construct power lines. The Fuchs submitted photos of the alleged property damage and evidence of the unauthorized entry, a copy of a police report, a receipt for a \$3,000 damage payment from Xcel, and some medical records related to Mr. Fuchs.

E. *Comments from Tom and JoAnn Vouk*<sup>26</sup>

Tom and JoAnn Vouk, residents of Cold Spring, Minnesota, submit comments related to the CapX2020 project and their experience with enforcement of “Buy the Farm” laws which require a utility to purchase private property for energy development under certain circumstances.

The Vouks explain that they voluntarily agreed to sell their property to Xcel pursuant to “Buy the Farm” legislation. The Vouks assert that Xcel is refusing to comply with Minnesota “Buy the Farm” laws and is acting in bad faith by: (1) failing to reimburse landowners for costs of appraisals or inspections; (2) refusing to complete property sales; (3) causing unnecessary delay by initiating legal proceedings seeking to avoid their legal obligations; and (4) intimidating landowners, through legal costs and undue delay, into selling their properties below market value.

The Vouks claim that once an energy developer is able to use contiguous properties to access construction, there is no incentive for the company to complete the land purchase. Thus, the Vouks contend that Xcel is initiating legal proceedings and

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<sup>24</sup> Ex. 8.

<sup>25</sup> Ex. 9.

<sup>26</sup> Ex. 10.

causing unnecessary delays to force lower sale prices or avoid required land purchases.

The Vouks recommend that the PUC enjoin CapX/Xcel from completing the installation of transmission lines until all "Buy the Farm" purchases are completed, or that the PUC create a committee to monitor and enforce compliance with "Buy the Farm" laws.

The Vouks include an email regarding trespassing allegedly committed by Xcel as part of the CapX2020 project.

F. *Comments from Kirsten and John Busse*<sup>27</sup>

Kirsten and John Busse, residents of Plymouth, Minnesota, submitted written comments regarding the Hollydale Power Line Project. The Busses encourage the PUC to increase public participation in the siting and routing process. The Busses explain that citizens have a right to protect their investment in real property. The construction of large electric generating facilities, such as power plants and transmission lines, often decrease the values of nearby properties. Accordingly, the Busses assert that existing developed properties should not be impacted by the siting or routing of new power plants or transmission lines when unused, raw land is available for that purpose. The Busses urge the PUC to route the Hollydale transmission lines in a way that causes the least amount of impact on existing homes.

G. *Comments of Doug McKibben*<sup>28</sup>

Doug McKibben, residence unknown, submitted comments regarding the Great River Energy construction of a new substation named the Chub Lake substation. Mr. McKibben asserts that the route permit for Great River Energy in eDocket No. 08-1474 provides for the construction of four new substations and the expansion of four existing substations. Mr. McKibben claims that the construction of the Chub Lake substation was not provided for in the permit, and that only an expansion of the Lake Marion substation was approved.

Mr. McKibben questions why there was no formal review process or approval for the new substation, and asserts that such a material change is outside the scope of the existing permit. Mr. McKibben expresses concern over the PUC allowing Great River Energy to make a significant change in the "11<sup>th</sup> hour" of the project, which detrimentally impacts a number of residents who relied, in the construction of their home, on Great River Energy's initial permit. Mr. McKibben reasons that such an untimely change is unfair to existing homeowners.

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<sup>27</sup> Ex. 16.

<sup>28</sup> Ex. 17.

H. *Comments of Michelle Sandstrom*<sup>29</sup>

Michelle Sandstrom, a resident of Cannon Falls, Minnesota, writes to express disillusionment over the routing process of CapX2020 high transmission lines running from Hampton to Rochester, and, specifically, through her property in Cannon Falls. Ms. Sandstrom explained that long after the EIS was completed on the CapX project and the public comment period expired, Xcel was allowed to change the proposed route and enter information in the EIS appendix without further evaluation or comment by the public, the DNR, MnDOT, or other state agencies. As a result, Ms. Sandstrom and other individual stakeholders were denied an opportunity to fully oppose the route that will now run through Ms. Sandstrom's property.

Ms. Sandstrom asserts that the DOC gave an unfair advantage to Xcel by: (1) supporting a Modified Preferred Route that was not originally presented in the EIS; (2) allowing Xcel to make a material change at the end of the process, thereby evading proper review. Ms. Sandstrom also notes examples of errors made by the EFP in its review and preparation of materials presented to the PUC.

Ms. Sandstrom expressed her disappointment that the PUC would not allow her lawyer to present her case during a PUC meeting. Ms. Sandstrom recommends that the PUC and DOC enforce fairness in the process by not allowing applicants to insert substantial changes in the final stages of the permitting process.

I. *Comments from Rochelle Nygaard*<sup>30</sup>

Rochelle Nygaard, a resident of Goodhue, Minnesota, writes to urge the PUC to include large wind energy conversion systems in the PPSA and allow them to be included in the annual public hearing regarding the same.

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<sup>29</sup> Ex. 18.

<sup>30</sup> Ex. 19.

*J. Untimely Public Comments*

Additional written comments from Marie McNamara and Jean Scheu were received after the close of the public comment period. These comments were marked as Exhibit 20 and 21, respectively, but were not included in the summary of public comments herein.

Dated: February 25, 2013

A handwritten signature in black ink, appearing to be 'AO', written over a horizontal line.

ANN O'REILLY  
Administrative Law Judge

Reported: Transcribed (Shaddix & Associates)

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

**CERTIFICATE OF SERVICE**

Case Title: <i>In the Matter of the 2012 Annual Power Plant Siting</i>	OAH No. 65-2500-30183
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Nancy J. Hansen certifies that on the 27th day of February, 2013, she served a true and correct copy of the attached REPORT TO COMMISSION, by serving it by courier service or by U S Mail with postage prepaid, addressed to the following individuals:

Executive Secretary Burl W. Haar  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 Seventh Pl E  
Saint Paul, MN 55101

All Parties as listed on the PUC list