

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE
OFFICE OF ENERGY SECURITY

In the Matter of the Applications of Buffalo Ridge Power Partners, LLC, for a Certificate of Need and a Site Permit for the Bitter Root Wind Farm Project in Yellow Medicine and Lincoln Counties

**SUMMARY OF PUBLIC COMMENTS
AND RECOMMENDATION**

Administrative Law Judge Steve S. Mihalchick conducted a public hearing in this matter on Tuesday, March 30, 2010, at P K Egans, 115 Saint Olaf Avenue North, Canby, Minnesota. The hearing was held pursuant to a Notice of Public Hearing issued on March 16, 2010.¹

Alan R. Mitchell, Attorney at Law, Fredrikson & Byron, P.A., 200 South Sixth Street, Minneapolis, MN 55402-1425, appeared on behalf of Applicant Buffalo Ridge Power Partners, LLC, (Buffalo Ridge or the Applicant). Suzanne Steinhauer, Project Manager, 85 7th Place East, Suite 500, St. Paul, MN 55101, appeared for the Energy Facility Permitting (EFP) Staff, Office of Energy Security, Department of Commerce (OES or Department). Michael Kaluzniak, Senior Energy Facility Planner for the Minnesota Public Utilities Commission (MPUC or Commission), also attended the public meeting.

Approximately thirteen members of the public attended the hearing, along with four representatives of Buffalo Ridge. Members of the public were advised that, in addition to making comments at the hearing, they could also submit written comments to Administrative Law Judge Bruce H. Johnson (the ALJ) until April 21, 2010, as stated in the Notice of Public Hearing.² Members of the public were further advised that they could also request a contested case hearing in this proceeding or before that date. The ALJ received twelve written comments after the hearing,³ along with one written request for a contested case hearing.⁴

¹ Notice of Public Hearing (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=20103-48060-01>)

² Transcript (Tr.) at 5, 10.

³ These comments have been marked as Public Comment Nos. 1 through 12.

⁴ Public Comment No. 9.

Description of the Project

Buffalo Ridge Power Partners, LLC (Buffalo Ridge), is a joint venture of ACCIONA Wind Energy USA, LLC (ACCIONA), and Global Winds Harvest, LLC (“Global Winds”). Buffalo Ridge is proposing to develop and construct the Bitter Root Wind Farm Project (the Project) as a 138 megawatt (MW) large wind energy conversion system. The Project’s purpose will be to produce renewable energy that will help meet the state’s renewable energy objectives. The Project will be located on approximately 22,500 acres in Fortier and Florida Townships in Yellow Medicine County and in Hansonville Township in Lincoln County. That area is predominantly an agricultural area that has a relatively low population density.

A final decision on turbine selection and design has not been made, but the Project will consist of wind turbines, with rated outputs between 1.5 and 3.0 MW, in order to produce 138 MW of electrical power. Each turbine will be connected to a supervisory control and data acquisition (SCADA) system via fiber optic cable to allow for real-time monitoring and control of turbine operation. Other associated facilities will include gravel access roads, a Project substation, an operation and maintenance building, meteorological towers, and an electrical collection system. The Project will interconnect to the transmission grid through the Project substation, which will be connected to the existing 115kV Canby to Toronto transmission line operated by Otter Tail Power Company.

Procedural History

1. On April 27, 2009, Buffalo Ridge filed an application with the Commission for a certificate of need (CON) for the Project.⁵

2. On July 7, 2009, the Commission issued an order finding Buffalo Ridge’s CON application to be complete and authorizing use of the informal process under Minn. R. 7829.1200.⁶

3. On October 13, 2009, Buffalo Ridge filed an application with the Commission for a site permit for the Project.⁷

4. On March 9, 2010, the Commission approved distribution of a Draft Site Permit for the Project for public comment and authorized EFP staff to implement the public participation process set forth in Minn. R. 7836.0900.⁸

⁵ Application for a CON (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=20094-36828-03>).

⁶ Order Finding CON Application to be Complete (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=20097-39366-01>).

⁷ Application for Site Permit (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=200910-42787-06>).

⁸ Environmental Report (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=20103-48016-01>).

Hearing Notice, Public Hearing, and Public Comment Process

5. On March 16, 2010, the OES issued a Notice of Availability of Draft Site Permit, Notice of Availability of Environmental Report and Notice of Public Hearing.⁹

7. On March 17, 2010, the Notice of Availability of Draft Site Permit, Notice of Availability of Environmental Report and Notice of Public Hearing was published in the Canby News, a local newspaper. On the same day that Notice was also published in the Hendricks Pioneer, another local newspaper.¹⁰

8. Administrative Law Judge Steve M. Mihalchick conducted a public hearing on the Project at 6:30 p.m. on Tuesday, March 30, 2010, at P K Egans, 115 Saint Olaf Avenue North, Canby, Minnesota. Approximately thirteen members of the public appeared at the public hearing, six of whom offered testimony about the proposed Project and related issues. After the hearing, the record remained open until April 21, 2010, to allow interested persons to submit written comments or to file a request for a contested case hearing. The record was closed on April 21, 2010.

9. The Commission will issue an order on Buffalo Ridge's applications for a Certificate of Need and a Site Permit after examining this Summary of Public Comments and Recommendation, a transcript of the public hearing, and all filings and argument submitted by Buffalo Ridge, the OES, and other persons and entities interested in this matter.

Summary of Public Testimony

As the OES Project Manager, Ms. Steinhauer discussed the responsibilities of the OES with respect to consideration of Buffalo Ridge's CON and Site Permit applications, and the actions that that agency has already taken. She also described the scoping meeting that OES had conducted in November 2009 and the Environmental Report on the Project that OES released on March 15, 2009.¹¹ She also discussed the draft Site Permit that the Commission had approved. Finally, Ms. Steinhauer advised members of the public of their right to request a contested case hearing.

Mr. Kaluzniak explained the processes that the Commission would follow in making decisions on both the CON and Site Permit Applications. He also emphasized that the Commission's acceptance of Buffalo Ridge's applications did not mean that the Commission had already approved those applications. He further indicated that the Commission would grant a request for a contested case hearing if it concluded that

⁹ Notice of Public Hearing
(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=20103-48060-01>).

¹⁰ Affidavits of Publication.
(<https://www.edockets.state.mn.us/EFiling/EFiling/ShowFile.do?DocNumber=20103-48016-01=20104-48827-01>)

¹¹ Environmental Report
(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=200911-44359-01>)

there were issues of material fact that were not fully developed in the record. Finally, Mr. Kaluzniak offered a tentative timeline for further proceedings.

Peter Kennon, representing Acciona Energy and Buffalo Ridge, is senior development manager for the Project. Mr. Kennon provided background on the features of and need for the Project. He first indicated that this Project was being developed by Buffalo Ridge, which is jointly owned by ACCONIA Energy and Global Winds, and that, when completed, the Project will be owned by ACCONIA. Finally, Mr. Kennon indicated that the Project was being developed to help satisfy Minnesota's renewable energy portfolio standards and regional demands for renewable energy, and that Buffalo Ridge would be supplying the energy produced by the Project to a Minnesota utility under a Power Purchase Agreement (PPA).

Mr. Kennon stated that the Project Buffalo Ridge was proposing would be a 138 MW Project, using either ninety-two 1.5 MW or forty-six 3.0 MW wind turbines, and that decisions on turbine size and mix had not yet been made. The Project will be located primarily in the southwest corner of Yellow Medicine County, with a few turbines to be located in the northwest corner of Lincoln County. Mr. Kennon stated that Buffalo Ridge would also be constructing a network of roads connecting the wind turbine sites with existing county and township roads. Those roads will be used to construct the Project and later to maintain it. Energy produced by the wind turbines will be collected by a network of underground medium voltage collection cables and will be transmitted to a substation and ultimately to an existing transmission line. Buffalo Ridge will also be constructing an operation and maintenance facility, where ten to twelve permanent staff will be based.

Mr. Kennon further indicated that Buffalo Ridge had already secured agreements with landowners in the Project areas covering 12,600 acres and was continuing to negotiate with other landowners. When completed, the Project will take approximately 120 acres of land out of production. Additionally, Mr. Kennon stated that all turbines would be located at least 1,000 feet from existing homes or at a location where noise levels at homes were 50 decibels (db) or less.

Robert Pollock is a botanist and farmer who is not participating in the Project and opposes it. If the Project is constructed with 1.5 MW wind generators, current plans indicate that about fifteen of those wind generators would be located within three-quarters of a mile from his 280-acre farm. Based on a Department of Health study, Mr. Pollock believed that those wind generators would create levels of noise that would disturb his sleep. He also believed that the wind generators would impair the scenic value of his property and thereby reduce its value. Additionally, it was Mr. Pollock's opinion that because no Power Purchase Agreement (PPA) has yet been executed and because necessary transmission infrastructure has not yet been built, issuing a CON for the Project is not warranted. Finally, it is Mr. Pollock's belief that the compensation that Buffalo Ridge is offering to landowners for site leases is unreasonably low, and that the presence of wind generators in the vicinity of his farm will drive up land values and his property taxes.

Deb Peterson also owns property in or near the Project area. Unlike Mr. Pollock Ms. Peterson believes that the Project will either not affect the value of adjacent land or, at most, would only cause property values to increase slightly. However, she does agree with Mr. Pollock that the visual presence of wind generators may make it more difficult for homeowners to sell their homes in the future.

Allan Winter is a supervisor and chairman of the Fortier Town Board. It was his belief that the increase in tax revenues that the Project will create will benefit everyone in the affected counties and townships.

George Peterson lives in Marble Township just south of the Project area. First, Mr. Peterson was concerned that the statutory permitting process set forth in Minn. Stat. § 216F.07 deprives local units of government of any meaningful governance or regulatory control over the Project. Additionally, information that he previously obtained indicated that transmission capacity does not yet exist to handle the power being generated by the Project. Finally, Mr. Peterson had concerns about the Project's adverse impacts on plant and wildlife species. In response to Mr. Peterson's concern about the absence of transmission capacity, Mr. Kennon indicated that an application to interconnect with the regional transmission system was filed with the Midwest ISO (MISO) in 2006. There would be upgrades of the regional transmission system to allow interconnection of the Bitter Root and other nearby wind generation projects the capital cost of which will be funded by Buffalo Ridge and other project owners. With regard to local government regulation of the Project, Ms. Steinhauer indicated that although the Commission has authority to permit wind projects over 5 MW, local counties have the authority to adopt more stringent ordinances. In the case of this Project, both Lincoln and Yellow Medicine Counties have adopted more stringent ordinances, and those ordinances have been incorporated into the Draft Site Permit as special conditions. The presence of those special conditions in the Draft Site Permit order will allow members of the public to see what those more stringent standards are and will enable the Commission to determine whether those more stringent standards should be incorporated into Project planning.

Paulette Wiesen inquired if Buffalo Ridge had determined whether the Project would be using 1.5 MW or 3.0 MW wind turbines. Mr. Kennon indicated that that decision had not yet been made because only 1.5 MW were currently being manufactured and 3.0 MW turbines were still under development. Ms. Wiesen also asked for an explanation of what a "wake loss study" was. Mr. Kennon responded that when turbine blades move through the air, they disrupt the flow of wind and create turbulence that affects efficiency of nearby turbines. A wake loss study measures those effects and is used to determine optimal spacing between wind turbines.

George Peterson expressed concern that because 3.0 MW wind turbines were still under development, it is currently not possible for him and other landowners to comment on what impact they might have. Mr. Kaluzniak responded that it is important now for members to articulate as well as possible any concerns they might have about the use of the larger 3.0 MW wind turbines. When the Commission makes its final decision about the size of wind turbines, it may adopt Site Permit as currently drafted,

may require the applicant to provide additional information, may specify one turbine choice over another, or may require additional testing, monitoring, or setback requirements.

Jim Stone owns property in Section 10 of Fortier Township; he also serves on the Lyon-Lincoln Co-Op Board. Mr. Stone spoke in favor of the Project, stating that wind is an important power source because of the environmental effects of coal-fired plants and the current unavailability of additional nuclear power plants.

Summary of Written Comments

Lionel Fales submitted comments stating that he favored the Project and believed that it would not be harmful to wildlife, would be helpful to area farmers, and would be very beneficial to small town business.¹²

Ronald Cech, who owns property in Hansonville Township, Lincoln County, also expressed his support for the Project and suggested that the Project's southern limit be moved south to include his land in Section 10 of that Township.¹³

Lewis Miller owns land in Fortier Township, Yellow Medicine County, and also has an interest in the Project. Mr. Miller believed that projects like the Bitter Root Wind Project are an important source of renewable energy to meet state mandates. He also believed that the Project would have significant economic benefits in the form of new jobs, increased tax revenues for the affected counties and townships, and rental payments to landowners.¹⁴

Similarly, Madelene Derostyne Sik is a landowner who will have a personal financial interest in the Project. She also believed that the entire community has a financial interest in having the Project constructed because it will generate income to enable the community to survive in poor economic times.¹⁵

Mona Evens believed that Southwestern Minnesota communities need the economic stimuli that the Project will create—such as, generation of jobs, increases in tax revenues and personal incomes, and purchases of local services and products.¹⁶

It is the opinion of Gary and Julie Van Hyfte that it will not only be property owners whose land will be rented land for wind generators who will benefit from the Project. Rather, the Project has already begun rejuvenating the local economy, with at least two new businesses being planned for the City of Canby.¹⁷

On the other hand, Lyndon and Laura Moravetz believed that landowners in the Project area who will not have wind generators located on their land should receive

¹² Public Comment No. 1.
¹³ Public Comment No. 2.
¹⁴ Public Comment No. 3.
¹⁵ Public Comment No. 4.
¹⁶ Public Comment No. 5.
¹⁷ Public Comment No. 6.

some kind of compensation for the noise that will be created and the vistas that will be impaired.¹⁸

Mark King, Roberta Anson-King, and Kelton King expressed similar concerns about the Project. They are also concerned that the effects that 3.0 MW on surrounding communities have not yet been studied. The Kings also believed that consideration should be given to expanding the size of existing wind farms before constructing new ones.¹⁹

Robert Pollock also submitted written comments to supplement the comments that he made during the public hearing. In those written comments, Mr. Pollock urged the Commission to reject the Site Permit and CON applications and requested a contested case hearing for the following reasons:

- a. The wind rights documents that Buffalo Ridge has prepared for use in the Project are not legal.
- b. The compensation that Buffalo Ridge is proposing to pay property owners for wind rights and rent is unreasonable and therefore represents exploitation of wind resources.
- c. There is likelihood of adverse health consequences resulting from a lack of objective micro-siting.
- d. The presence of the wind generators will degrade the aesthetic value of the landscape.
- e. Farmers will experience increases in land values and real estate taxes due to corporate speculation.
- f. The Lease Option Agreement that Buffalo Ridge tendered to Mr. Pollock is defective for several reasons.²⁰

The Southwest Regional Development Commission (SWRDC) reviewed the proposed Project and made the following comments:

- a. The Yellow Medicine and Lincoln County Highway Engineers and Zoning Administrators should be invited to the preconstruction meeting.
- b. There should be early communication between the developer and County Highway Departments regarding such matters as a road agreement, a structure inventory, a traffic plan, and permits.
- c. The last sentence of Part III.B.8.(b) of the Draft Site Permit should be amended to read: "Access roads shall also be located and constructed in

¹⁸ Public Comment No. 7.

¹⁹ Public Comment No. 8.

²⁰ Public Comment No. 9.

accordance with all necessary township, county or state road requirements and permits.”

d. The title of Part III.B.16 of the Draft Site Permit should be changed from “FIRE PROTECTION” to “EMERGENCY RESPONSE,” noting that most rural fire departments and EMTs do not have the expertise to respond to an incident at a large wind energy conversion system. The SWRDC also recommended that the developer consider conducting training for emergency response personnel in the Project area.²¹

The Minnesota Department of Natural Resources (DNR) submitted the following comments and requests:

a. The proposed site plan layout that include 3.0 MW turbines appears to generally involve less encroachment of natural resource features and rare habitat. The use of 3.0 MW turbines may be a useful way to avoid habitat fragmentation or encroachment in some areas with natural resources by reducing the number of turbines. The DNR would therefore prefer the use of 3.0 MW turbines for this entire project or wherever possible.

b. The Yellow Medicine Coteau Macrosite is an area identified by the Minnesota County Biological Survey (MCBS) as a large area of significant prairies and a matrix of grassland connecting those prairies. The DNR recommends avoiding any disturbance of the Yellow Medicine Coteau Macrosite because of the rare status of native prairie. It also recommends avoiding disturbance of connected native prairie, grassland habitat, and MCBS sites of moderate biodiversity which may provide species movement. Rare animal and botanical surveys will be required if the proposed project will impact any native prairie remnants.

c. The DNR identified two 1.5 MW turbines and one 3.0 MW turbine as being sited in areas mapped by MCBS as native prairie. The DNR recommends moving those turbines out of native prairie. The DNR also recommends adjusting turbine locations to avoid creating a habitat barrier.

d. Although there are calcareous fens within the Project area, it appears that siting plans do not contemplate turbines being sited in those areas. Nevertheless, if any dewatering or other hydrologic alteration is required near a fen during construction, operation, or maintenance of wind turbines or associated infrastructure, the Applicant should first contact the DNR.

e. The turbine layout map shows an access road crossing a waterway, which will require a license from the DNR Division of Lands and Minerals. Additionally, studies indicate that avian mortality increases when turbines are located close to wetlands. The DNR therefore recommends

²¹ Public Comment No. 10.

adoption of the 1.5 MW turbine siting layout which would site turbines farther away from wetland habitats.

f. DNR recommends conducting pre-construction surveys that include flight analysis surveys in areas where rows of turbines may create flight barrier or collisions risks to determine what micro-siting changes may be necessary to avoid and minimize impacts to birds and bats.

g. Finally, the DNR recommends that comparisons be made between pre-construction surveys and two years of post-construction mortality surveys in order to gain an understanding of actual impacts at high risk sites, like this Project. This would aid in developing adaptive management techniques if there is high or rare species mortality at this site.²²

On April 21, 2009, Alan R. Mitchell submitted written comments to the ALJ on behalf of Buffalo Ridge. In those comments, the Applicant requested the Commission to grant both a CON and a Site Permit, noting that the OES staff had concluded that Buffalo Ridge had satisfied all of the criteria for a CON and had recommended that a CON be granted. The Applicant's written comments also responded to comments made at the public hearing and written comments submitted after the hearing:

a. The Applicant remarked that it has been common practice for the Commission to grant CONs and Site Permits for similar projects even though transmission issues had not yet been completely resolved. Buffalo Ridge also noted that although it cannot begin construction until it has an executed PPA, absence of a PPA does not preclude issuance of a Site Permit. In fact, it has been industry practice that utilities purchasing power will not agree to a PPA until after the power producer has the permits necessary for construction in hand.

b. Buffalo Ridge pointed out that the Draft Site Permit prohibits the siting of turbines and associated infrastructure in wildlife management areas (Condition III.C.4) and in certain wetland areas (Condition III.C.5) without first obtaining necessary DNR permits. The Applicant stated that it will comply with those conditions. The Applicant also indicated that it will comply with the setback requirement from lands where it does not hold wind rights. However, the Applicant commented that elimination of certain turbine locations because of their visual impact, as suggested by some commenters, would make the Project less efficient in its use of available wind energy. That, in turn, would be detrimental to ratepayers and the state's efforts to promote renewable energy resources.

c. As required by statute, the Applicant stated that it will comply with all applicable local standards established in ordinance by the affected counties. Previously, both Lincoln and Yellow Medicine Counties had adopted ordinances relating to wind projects located in those counties. Thereafter, Special Condition III.N.2, which describes the setback standards in those county ordinances, was

²² Public Comment No. 11.

placed in the Draft Site Permit. However, the Yellow Medicine County Board has subsequently rescinded its ordinance, and the Applicant is therefore requesting the Commission to delete the Yellow Medicine County standards from Special Condition III.N.2.

d. Additionally, Buffalo Ridge noted that only seven turbines will be sited in Lincoln County and stated that it has reached an understanding with the Lincoln County Board that nothing set forth in that county's ordinance should restrict the Applicant from siting the Project's turbine as proposed. Buffalo Ridge has therefore proposed alternative language for Special Condition III.N.2 that is consistent with that understanding.

e. In both his hearing testimony and his post-hearing comments, Mr. Pollock asserted that he and other members of the public would be adversely impacted by low frequency sounds produced by nearby wind turbines. The Applicant noted that the issue of sound impacts to residences near turbine sites had been raised in several previous dockets, and that the Commission has opened a separate docket to address that issue.²³ The Applicant responded to the claim of adverse health effects resulting from turbine noise by pointing out that the Commission has continued to approve wind project applications while that docket is pending, so long as the projects proposed by applicants conform to the requirements of existing regulations. Buffalo Ridge asserted that wind turbine siting for the Project, as proposed, meets all applicable state noise standards. The Applicant further stated that Condition III.F.2 of the Draft Site Permit requires it to conduct a noise study of sound levels at different frequencies at various distances from the nearest turbines, and that it has agreed not to place any turbines within 1000 feet of a residence, which is double the distance required in some past projects.

f. In both his hearing testimony and his post-hearing comments, Mr. Pollock also asserted that construction of the wind farm would result in increases in the value of his property and therefore increases in his future real estate taxes. Buffalo Ridge responded to that assertion by citing a study on the impact of wind power projects on residential property values, which indicated that there is no evidence that home prices surrounding wind facilities are consistently, measurably, and significantly affected by the presence of those facilities.

g. In response to Mr. Pollock's contention that the compensation that Buffalo is proposing to pay to landowners is unreasonable, the Applicant states that negotiated easement agreements are arms-length transactions over which the Commission has no statutory jurisdiction.

h. Buffalo Ridge also responded to concerns raised by some members of the public about the fact that Buffalo Ridge has not yet determined the extent to which the Project would be using 1.5 MW or 3.0 MW wind turbines.

²³ See PUC Docket No. M-09-845.

The Applicant stated that the Commission had previously issued site permits for other wind facilities before the developers had chosen a turbine model. The Applicant also referred to Conditions III.A.1 and A.3 of the Draft Site Permit, which requires it to advise the Commission in advance of construction which turbine model has been selected.

i. Buffalo Ridge also addressed the concern that there is currently no provision for interconnecting the Project to the high-voltage bulk transmission system. The Applicant indicated that it had filed a Request for Interconnection with MISO on April 11, 2006, and that necessary Interconnection Agreements were currently being negotiated. The Applicant further indicated its belief that, as a practical matter, issuance of a Site Permit was a pre-condition to actually proceeding with transmission upgrades because it would provide the developer with the degree of regulatory certainty necessary to make those large investments.

j. Finally, Buffalo Ridge represented that because it preferred that its applications for a CON and Site Permit be combined into a single proceeding, it had no objection to the Commission delaying action on its application beyond the time periods specified by statute and rule.²⁴

No other written comments from the public were received.

FINDINGS AND CONCLUSIONS

Based on the record in this proceeding, the ALJ makes the following Findings and Conclusions regarding the request of Robert Pollock for a contested case hearing:

1. Based on a Lease Option Agreement provided to Mr. Pollock by Buffalo Ridge, Mr. Pollock contends that the wind rights documents that Buffalo Ridge has prepared for use in the Project are not legal because: (a) the legal description for that property was inaccurate; (b) the document had not been properly notarized; and (c) there was no indication of who prepared the document, as required by Minnesota law.²⁵ The fact that the particular Lease Option Agreement that was tendered to Mr. Pollock may have had those legal defects does not establish that Lease Option Agreements that Buffalo Ridge has actually executed with other landowners had similar defects. Moreover, the Commission lacks jurisdiction to determine the legal adequacy of any Lease Option Agreements that Buffalo Ridge may have entered into in connection with the Project. This contention therefore does not raise issues of fact that are material to the outcome of this proceeding.

2. Mr. Pollock also contends that the compensation that Buffalo is proposing to pay property owners for wind rights and rental for wind generators is unreasonable and therefore represents exploitation of wind resources. To support this contention, Mr. Pollock offered calculations he made of what he believes to be the annual gross

²⁴ Public Comment No. 12.

²⁵ Public Comment No. 9.

revenues of a 1.5 MW wind turbine in comparison with the annual lease payment that Buffalo Ridge offered him.²⁶ As Buffalo Ridge stated in its written comments, the annual lease payments set forth in the Applicant's lease agreements with landowners are negotiated arms-length transactions over which the Commission has no statutory jurisdiction. Therefore this contention also does not raise issues of fact that are material to the outcome of this proceeding.

3. Mr. Pollock, along with some other members of the public, expressed concern about likelihood of adverse health consequences resulting from the proximity of residences to wind turbines. He makes reference to the Department of Health study, *Public Health Impacts of Wind Projects*.²⁷ To the extent that issues of material fact exist regarding the health effects in residences caused by low frequency sounds produced by nearby wind turbines, the Commission has chosen to address those issues in a separate pending docket. The ALJ therefore concludes that addressing those issues in a contested case hearing in this matter would be duplicative of actions that the Commission has already taken and, therefore, unnecessary.

4. Mr. Pollock also contends that landowners will experience increases in land values and, therefore, in their future real estate taxes if the Project is constructed. In response, Buffalo Ridge cited a study entitled, *The Impact of Wind Power Projects on Residential Property Values in the United States: A Multi-Site Hedonic Analysis*, published by the Ernest Orlando Lawrence Berkeley National Laboratory in December 2009,²⁸ on the impact of wind power projects on residential property values. That study concluded:

The various analyses are strongly consistent in that none of the models uncovers conclusive evidence of the existence of any widespread property value impacts that might be present in communities surrounding wind energy facilities. Specifically, neither the view of the wind facilities nor the distance of the home to those facilities is found to have any consistent, measurable, and statistically significant effect on home sales prices. Although the analysis cannot dismiss the possibility that individual homes or small numbers of homes have been or could be negatively impacted, it finds that if these impacts do exist, they are either too small and/or too infrequent to result in any widespread, statistically observable impact.²⁹

As evidence for his position, Mr. Pollock offered a copy of a St. Paul Pioneer Press newspaper article, which contained a statement by Lisa Linowes, executive director of the Industrial Wind Action Group, who said "[T]he study was flawed because it compared properties that varied too widely in age and market price."³⁰ Mr. Pollock also

²⁶ Public Comment No. 9, Tab 2.

²⁷ Public Comment No. 9, Tab 3.

²⁸ , *The Impact of Wind Power Projects on Residential Property Values in the United States: A Multi-Site Hedonic Analysis*, (Ernest Orlando Lawrence Berkeley National Laboratory, December 2009), available at <http://eetd.lbl.gov/EA/EMP/reports/lbnl-2829e.pdf>. (Livermore Study).

²⁹ Livermore Study. at p. iii.

³⁰ Public Comment No. 9, Tab 4.

submitted tax records showing increases in recent years in the assessed value of his property and his property taxes.³¹ However, those tax records fail to establish that the any revaluation of Mr. Pollock's property was based on the impending Bitter Root Project, rather than on other market factors. In summary, although the impact of wind facilities on the market value of adjacent and nearby lands may be a disputed issue of fact, the only current objective evidence on the subject is the Livermore study. A contested case hearing on that issue is therefore unlikely to develop the factual record more fully.

5. Mr. Pollock also indicated that a contested case hearing was necessary to develop the issue of whether the presence of wind generators will degrade the aesthetic value of nearby properties. However, the only objective evidence cited by anyone that could reasonably shed light on that issue is the Livermore Study, mentioned above. Because of the highly personal and subjective nature of individual opinions about aesthetics and because of the absence of any other objective evidence, the ALJ concludes that a contested case hearing addressing possible degradation of aesthetic values is unlikely to develop the factual record more fully.

6. In view of the above, the ALJ concluded that a contested case hearing is not likely to develop the material issues of fact in this proceeding more fully.

RECOMMENDATION

Based upon the Findings and Conclusions set forth above, the Administrative Law Judge respectfully recommends that the Commission DENY the request of Robert Pollock for a contested case hearing.

Dated: May 3, 2010

s/Bruce H. Johnson

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge

Reported: Shaddix and Associates
Christine Simons, Ct Reporter
Transcript Prepared

NOTICE

This report contains a summary of public comments. It is not a final decision. Pursuant to Minn. R. 7850.3900, the Commission will make the final determination of the matters at issue after receiving the public hearing record from the ALJ.

³¹ Public Comment No. 9, Tab 5.