

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

In the Matter of the 2014 Annual Hearing
on the Power Plant Siting and
Transmission Line Routing Program

REPORT TO THE COMMISSION

On November 10, 2014, the Minnesota Public Utilities Commission (Commission or PUC) requested that the Office of Administrative Hearings conduct on its behalf the 2014 Annual Hearing on the Power Plant Siting and Transmission Line Routing Program required by Minn. Stat. § 216E.07 (2014). 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 the 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 policies under the Power Plant Siting Act (PPSA)¹ and the Commission's Power Plant and Transmission Line Siting Rules.²

Administrative Law Judge Barbara L. Neilson conducted the public hearing at 9:30 a.m. on December 19, 2014, 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 January 30, 2015.³

Notice of the Annual Hearing

The PPSA requires the Commission to hold a public hearing each year 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.⁴ The Commission must provide at least ten days but no more than 45 days' notice of the annual hearing, along with a tentative agenda for the hearing. The hearing notice must be mailed or served electronically on persons who have

¹ See Minnesota Statutes Chapter 216E (2014).

² See Minn. R. 7850.1000-5600 (2013).

³ Ex. 1 at 2 (Notice of the Power Plant Siting and Transmission Line Routing Program Annual Hearing); Transcript of 2014 Annual Hearing on the Power Plant Siting and Transmission Line Routing Program (Tr.) at 6, 33 (Dec. 19, 2014).

⁴ Minn. Stat. § 216E.07.

requested notice and must be published in the *EQB Monitor* and on the Commission's calendar.⁵

On December 5, 2014, the Commission served notice of the annual hearing on those persons who requested notice.⁶ The notice, which included a tentative agenda, was published in the *EQB Monitor* (an electronic newsletter issued by the Environmental Quality Board) on December 8, 2014,⁷ and was posted on the Commission's web calendar.⁸

Approximately eight members of the public (not including staff of the Department of Commerce, the Department of Natural Resources, or the Commission) attended the hearing.⁹ Two of those individuals gave oral testimony during the hearing,¹⁰ and one of the two also provided written comments.¹¹ Following the hearing, two additional individuals provided written comments.¹² These comments are discussed in detail below.

Introductions and Comments from PUC and DOC Staff

*A. Scott Ek, Public Utilities Commission*¹³

Scott Ek, Facilities Planner in the Energy Facilities Unit of the PUC, explained that the Commission's Energy Facilities staff manages the review process when applications are submitted to construct or modify large energy facilities in Minnesota, including power plants, transmission lines, wind power generation plants, and natural gas and petroleum pipelines. Energy Facilities personnel are responsible for ensuring that all the steps of the review process required by applicable statutes and rules are followed. They also bring important information in the record to the attention of the Commissioners and advise them of the implications of the various options. Mr. Ek emphasized that public participation is another important part of the process, and stated that Tracy Smetana, the Commission's Public Advisor, would address that topic in her presentation at the hearing.

⁵ See Minn. Stat. § 216E.07; Minn. R. 7850.5400, subp. 2.

⁶ Ex. 1; Certificate of Service of Margie DeLaHunt and attached Service Lists (Dec. 5, 2014) (eDocket No. 201412-105196-02).

⁷ Ex. 5 (EQB Monitor, Vol. 38, No. 25, published on Dec. 8, 2014).

⁸ See PUC Calendar for December 19, 2014, hearing which incorporates a link to the Hearing Notice in the eDocket for this matter, available at <http://www.trumba.com/calendars/mn-puc?trumbaEmbed=date%3D20141219>.

⁹ See Hearing Register (Dec. 19, 2014) (eDocket No. 20151-105883-06).

¹⁰ Tr. at 17-25 (Marie McNamara) and 25-33 (Carol Overland) (Dec. 19, 2014).

¹¹ See Written Comments of M. McNamara (Dec. 22, 2014) (eDocket No. 201412-105196-01).

¹² See Written Comment of Don Peterson (Dec. 17, 2014) (eDocket No. 20153-107747-01); Written Comment of Darrell and Delores White (Jan. 14, 2015) (eDocket No. 20153-107813-01).

¹³ Tr. at 9-10 (Dec. 19, 2014) (Testimony of Scott Ek).

B. *Tracy Smetana, Public Utilities Commission*¹⁴

Tracy Smetana, the Commission's Public Advisor, stated that the Commission is engaging in efforts to enhance public participation in proceedings involving the siting of power plants and the routing of transmission lines. She indicated that the notices of public meetings and invitations for public comment issued by the Commission have been streamlined and standardized. The notices now use a clear question-and-answer format to identify the topics on which comments are sought, in an effort to help members of the public provide relevant and useful information. Ms. Smetana also noted that project contact lists have been moved into the Commission's eService system to allow for electronic service on individuals who wish to receive it. Individuals who wish to receive notices by U.S. mail continue to be able to select that option. More general service lists that applicants need to use at various stages of proceedings have also been updated and moved into the eService system to facilitate access to those lists.

Ms. Smetana explained that the Commission has also added a new online comment feature called Speak Up, which provides a forum for members of the public to post comments on particular issues presented in proceedings and immediately makes those comments available for others to see on the Commission's website. Ms. Smetana indicated that this approach should make the process more transparent and also make it easier for the public, the agencies, and stakeholders to find relevant information in the record.

During the hearing, the Commission provided documents describing how to obtain information regarding pending PUC dockets¹⁵ and how to add comments using Speak Up.¹⁶

C. *Kate Kahlert, Public Utilities Commission*¹⁷

Kate Kahlert, an attorney in the Commission's Legal Unit, provided an overview of the Commission's pending rulemaking efforts under Chapters 7849 and 7850 of the PUC rules.¹⁸ Those rules govern certificates of need and site and route permits for large electric power plants and high voltage transmission lines. Ms. Kahlert noted that the Commission issued a Request for Comments on possible amendments to Chapters 7849 and 7850 in 2012 and has since established an advisory committee to consider potential rule amendments. Ms. Kahlert expected that updated drafts of the proposed rules would be available to the advisory committee for further input shortly after January 1, 2015, and would be subsequently available for public comment.

¹⁴ *Id.* at 10-13 (Test. of Tracy Smetana).

¹⁵ Ex. 2.

¹⁶ Ex. 3.

¹⁷ Tr. at 13-14 (Dec. 19, 2014) (Test. of Kate Kahlert).

¹⁸ See PUC Docket No. E,ET,IP-999/R-12-1246.

D. *Ray Kirsch, Department of Commerce*¹⁹

Ray Kirsch is employed by the Energy Environmental Review and Analysis unit (EERA) of the Minnesota Department of Commerce. Mr. Kirsch explained that the EERA conducts the environmental review that is required for proposed energy facilities in Minnesota, and provides technical expertise and assistance 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 EERA prepares protocols and guidance materials for permit applicants and permittees, conducts research into energy issues, and coordinates with and provides assistance to other state agencies in assessing environmental impacts associated with energy facilities.

Mr. Kirsch provided a document prepared by the EERA entitled “Power Plant Siting Act: 2014 Year in Review,” which was received into the hearing record.²⁰ This document summarizes the power plant and transmission line projects that were permitted during 2014 as well as projects that are currently in the permitting process. According to the summary, the EERA assisted the PUC in permitting eight high voltage transmission lines, and in authorizing minor alterations in three transmission lines. EERA staff also prepared five environmental review documents and conducted compliance reviews of pre-construction projects. The EERA document includes a chart that identifies and describes each project and provides the date the Commission issued its decision concerning the project. The summary document also indicates that one power plant project (the Aurora Distributed Solar Project)²¹ and one transmission line project (Minnesota Power’s Great Northern Transmission Line)²² remained under review at the time of the public hearing.

Summary of Public Hearing Testimony and Written Comments Submitted

Marie McNamara and Carol Overland, Esq., provided oral testimony during the public hearing on December 19, 2014. Written comments were received from Ms. McNamara and from Don Peterson during the comment period ending at 4:30 p.m. on January 30, 2015.

Summary of Public Testimony

A. *Testimony and Written Comments of Marie McNamara*²³

Marie McNamara, a resident of Goodhue County, provided both written and oral comments, which are summarized together herein. Ms. McNamara raised nine general concerns, which are summarized below:

¹⁹ Tr. at 14-17 (Dec. 19, 2014) (Test. of Ray Kirsch).

²⁰ Ex. 4.

²¹ PUC Docket No. GS-14-515.

²² PUC Docket No. TL-14-21.

²³ Tr. at 17-25 (Dec. 19, 2014) (Test. of M. McNamara); Written Comments of M. McNamara (Dec. 22, 2014) (eDocket. No. 201412-105196-01).

1) Ms. McNamara made two suggestions that she believes will encourage greater public participation in the annual public hearing held under the PPSA. She urged that the annual hearing be held in January rather than in the days prior to Christmas. She also recommended that the Commission give at least four weeks' notice prior to the hearing, and emphasized that the PPSA allows a maximum of 45 days' notice.

2) Ms. McNamara requested that persons testifying in public hearings or contested case proceedings first be placed under oath to ensure that there will be potential penalties if individuals willfully provide incorrect information.

3) Ms. McNamara urged that the Commission not accept applications as complete if the initial information contained in the application is known to be incomplete or in error. For example, she argued that the Commission should deny an application as incomplete if an initial examination of the application shows that homes or existing businesses are missing; known transmission corridors are not identified; obvious environmental features such as wetlands, lakes, and rivers have been omitted; important information regarding meteorological towers in the region is not included; or avian and bat monitoring stations are not located within the project footprint and following protocols suggested by the Minnesota Department of Natural Resources (DNR) and the United States Fish and Wildlife Service (USFWS) to obtain correct information. In this regard, Ms. McNamara argued that more burden needs to be placed on applicants at the front end of the process, and applications that have glaring gaps and incorrect information must be rejected before the permitting clock is started.

4) Ms. McNamara suggested that the ownership of land and the need for contracts with landowners for power plant projects be verified at the beginning of the application process. In particular, she expressed concern that limited liability corporations are being taken over by new owners after permits for wind projects are granted, and urged the PUC to suspend permits if there is a failure to provide notice of changes in ownership. She also recommended that the Commission solicit public comments or hold a hearing be held before reinstating a revoked or suspended permit.

5) Ms. McNamara recommended that applicants be required to bear the cost of making transcripts available at public libraries and the courthouse in the county where a project is proposed. She further suggested that copies of transcripts be included in the docket of the project without "shorting" the court reporter."

6) If errors, omissions, or false information in applications make it necessary to send agency personnel from the DNR or the Minnesota Department of Transportation (MnDOT) to proposed project sites, Ms. McNamara asked that applicants be assessed all associated costs. She also urged that Environmental Impact Statements (EIS) be required for all power plants because Environmental Reviews do not impose a sufficient degree of scrutiny. In addition, she suggested that no further alternatives should be allowed to be introduced after completion of the EIS in dockets involving transmission line route permits.

7) Ms. McNamara further emphasized the importance of providing proper notice to members of the public. If such notice has not been given, she urged that the timeline for the proceeding be adjusted regardless of whether the applicant made a “good faith effort” to provide notice. In addition, she suggested that the rule amendments made to Chapter 7849 and 7850 of the Commission’s rules include a requirement that public service radio announcements be used as one means to notify the public of proposed projects, because many individuals working on farms listen to the radio.

8) Ms. McNamara suggested that a reference to “Buy the Farm” requirements²⁴ should be included in the amendments that are made to the Commission’s rules contained in Chapters 7849 and 7850.

9) Finally, Ms. McNamara requested that a hearing be held in the PUC’s 09-845 docket, which involves health and safety issues surrounding the siting of large-scale industrial wind turbines. After the hearing is completed, she asserted that the Commission should change the previously-established baseline siting matrix for turbines to reflect safer standards. Ms. McNamara pointed out that this docket has been open since 2009 and contended that a hearing and corrective action are long overdue. She asserted that the Minnesota Pollution Control Agency (MPCA) has acknowledged that Minnesota’s existing noise standard was not designed for industrial wind turbines. She also maintained that much more is known today about the health and safety issues associated with industrial wind turbines than was known in 2005-2008, when the existing Minnesota standards were established. For example, Ms. McNamara indicated that the Minnesota Department of Health (MDH) issued a white paper in 2009 on the public health impacts of wind turbines, worldwide research is available on the noise and health effects, recent developments have occurred in Wisconsin regarding such effects, and the World Health Organization has provided updated information.

B. *Testimony of Carol Overland*²⁵

Carol Overland, an attorney who has specialized in energy law for many years, also provided testimony during the public hearing. She addressed seven primary subject areas in her comments, which are summarized below.

1) As an initial matter, Ms. Overland urged the Commission to ensure that notice plans, affidavits of service, and service lists are included in the record of every proceeding. Although she acknowledged that these documents typically are made part of the record, she asserted that they occasionally are not. Ms. Overland also suggested that records and reports relating to citizen advisory task forces and comments made by other agencies be made part of the record in every proceeding. She recommended that the amendments made to Chapters 7849 and 7850 of the Commission’s rules include requirements clarifying that these documents shall be made part of the record in PUC proceedings.

²⁴ “Buy the Farm” laws require a utility to purchase private property for energy development under certain circumstances.

²⁵ Tr. at 25-33 (Dec. 19, 2014) (Test. of C. Overland).

2) Ms. Overland commented that coordination with state and federal agencies in Commission proceedings has improved. She noted that the DNR and MnDOT have been promptly filing their submissions in the eDocket system, but asserted that the Commission should make additional efforts to ensure that the record includes comments made by federal agencies such as the USFWS and the Army Corps of Engineers. Ms. Overland maintained that participation by the MPCA and the MDH in Commission proceedings has been lacking. While she noted that the MPCA has been involved in at least one pipeline docket, she believes that both the MPCA and the MDH should be involved in dockets involving the siting of wind projects and power plants, as well as some transmission line cases. She indicated that the USFWS and the DNR have been diligent about making site visits, and emphasized that she believes agency representatives gain the greatest understanding of the impact of a proposed project if they physically inspect the proposed site rather than merely conducting a desktop review.

3) Ms. Overland further suggested that legislative action be taken to incorporate Chapter 216F of the Minnesota Statutes (pertaining to Wind Energy Conversion Systems) into the PPSA. In the meantime, she recommended that the Commission encourage public participation in wind dockets to the same extent as such participation is required under the PPSA.

4) Ms. Overland commented that electronic filing in Commission proceedings has greatly enhanced the ability of members of the public to participate in particular dockets. She recommended that the Commission take steps to encourage librarians across the state to provide the necessary assistance to members of the public in order to facilitate access to eDockets.

5) Ms. Overland urged the Commission to examine situations in which wind project permits have been revoked or lapsed and have not been renewed, and consider whether this warrants further review of the permitting process and the information required during that process. She asserted that there were five or six occasions on which this occurred during 2013, and she believes that there was at least one occasion in 2014 as well. Ms. Overland is concerned that the number of permits that have been revoked reflects problems with the process by which such permits are initially granted.

6) Ms. Overland urged the Commission to consider making amendments to its rules relating to wind projects and pipelines, but did not provide detailed comments regarding the nature of the amendments she is seeking.

7) Finally, Ms. Overland echoed Ms. McNamara's suggestions that action be taken regarding Docket 09-845 relating to the public health impact of wind turbines, and that transcripts be available in e-Dockets after providing appropriate compensation to the court reporter.

C. *Comments of Don Peterson*²⁶

Don Peterson (address unknown) posted a written comment on Speak Up on December 17, 2014, expressing concern about the failure of a power company to notify him of a proposed transmission line route. In his comment, Mr. Peterson stated that he had purchased land in Koochiching County in March of 2012, and the deed was recorded around the same time. Mr. Peterson learned through a neighbor in February of 2013 that a proposed transmission line might go through his property. He had not previously been notified by the power company of any meetings regarding the proposed route. Mr. Peterson stated that his son had purchased a parcel of land about two miles away from his at the same time, and had the same experience. When Mr. Peterson contacted the power company to discuss the situation, he was told that the company purchases lists of affected landowners from the county but such lists are often not up-to-date.

Mr. Peterson asserted in his comment that it is to the advantage of the power company to send notice to a former owner rather than a current owner, since this will result in fewer people attending the company's meetings to question the need for the proposed transmission line or the location of the proposed route. He also pointed out that he had received a real estate tax notice from the county, so the county did, in fact, know who the rightful owner of the property was. Mr. Peterson questioned the legality of the approach used by the power company to identify landowners who should receive notice.

D. *Comments of Darrell and Delores White*²⁷

Darrell and Delores White, who live in Bovey, Minnesota, provided a written comment that was received by the Public Utilities Commission on January 14, 2015. In their comment, the Whites expressed concern that their property value will decline and their ability to sell their property will be affected if a high-voltage transmission line is constructed on their land or adjacent to their property line. They noted that they already have a gas line that runs through their property and stated that they did not want their land used by more utilities.

Dated: March 2, 2015

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Transcript Prepared by Shaddix & Associates

²⁶ Written Comment of Don Peterson (Dec. 17, 2014) (eDocket No. 20153-107747-01).

²⁷ Written Comment of Darrell and Delores White (Jan. 14, 2015) (eDocket No. 20153-107747-01).