

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

In the Matter of the Application for a
Certificate of Need for the Trimont Area
Wind Farm

FIRST
PREHEARING ORDER

The above-entitled matter came on for a Prehearing Conference, pursuant to notice, on January 16, 2004, at the Minnesota Public Utilities Commission, in St. Paul, Minnesota, before Allan W. Klein, Administrative Law Judge for the Office of Administrative Hearings.

Appearances: For the Applicant, Trimont Area Wind Farm, LLC, John E. Drawz, Fredrikson & Byron, 4000 Pillsbury Center, 200 South 6th Street, Minneapolis, MN 55402-1425

For the Minnesota Department of Commerce, Karen Finstad Hammel, Assistant Attorney General, 1400 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2131.

For Participant (but not party) Environmental Quality Board Staff, Alan R. Mitchell, Manager, Energy Facility Permitting, 302 Centennial Building, 658 Cedar Street, St. Paul, MN 55155-0001.

For the Minnesota Public Utilities Commission Staff, David L. Jacobson, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.

Discussion was held among the participants who took part in the Prehearing Conference, and having considered all the arguments and comments, as well as written submissions filed by the participants, the Administrative Law Judge makes the following Prehearing Order:

INTERVENORS

1. The final date for intervention is March 12, 2004.

Any person allowed to intervene in this proceeding after the date of this Order shall be bound by the terms of this Order.

SCHEDULE

The following Schedule is adopted and, except when modified by Order of the Administrative Law Judge, shall govern this proceeding:

2. Intervention deadline – March 12, 2004.
3. Direct testimony – March 19, 2004.
4. Rebuttal testimony filed – March 29, 2004.

5. Hearings -- **April 5, 2004 beginning at 1:00 p.m.**, at a location in the Trimont Area to be announced. Members of the public shall have first priority beginning at 3:00 p.m. and again at 7:00 p.m. on April 5, 2004, at the same location.

6. The parties shall submit Briefs and are encouraged to submit proposed Findings of Fact and Conclusions, all appropriately referenced to the official record, at such times after the close of the hearings as shall be directed by the Administrative Law Judge.

PROCEDURE

7. The Rules of the Office of Administrative Hearings shall govern the conduct of the hearings herein. To the extent they do not conflict, the Rules shall be followed.

FILING OF DOCUMENTS

8. All direct testimony sponsored by all parties shall be filed in writing with the Administrative Law Judge and shall be received by the parties in accordance with the schedule herein. All prefiled testimony shall be in question and answer format.

9. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

a. Prior to the issuance of the Report of the Administrative Law Judge, the original document and one copy shall be delivered or mailed to:

Allan W. Klein
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, Minnesota 55401-2138

b. Fifteen (15) copies shall be filed with the Commission Secretary for distribution among Commissioners and Commission staff. The copies shall be delivered or mailed to:

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square
121 Seventh Place East
St. Paul, Minnesota 55101

c. Except as hereinafter provided, one (1) copy shall be served personally or by mail on the attorney of record for each party, or, if there is no attorney, upon the party.

d. Four (4) copies of each such document shall be served personally or by mail on Kathy Aslakson as follows:

Kathy Aslakson
Minnesota Department of Commerce
Suite 500
85 Seventh Place East
St. Paul, Minnesota 55101-2198

e. One (1) copy of each of such document shall be served personally or by mail on:

Janet Shaddix Elling
Janet Shaddix & Assoc.
9100 W. Bloomington Freeway, Suite 122
Bloomington, MN 55431

f. A service list is attached hereto as Exhibit A and made a part hereof. Service of documents in the numbers required by this Order shall be made according to such service list.

g. Following the Report of the Administrative Law Judge, original documents shall be filed with the Secretary of the Commission. A copy need not be filed with the Office of Administrative Hearings.

h. Pursuant to Minnesota Rules, part 1400.5100, subp. 9, the effective date of filing shall be the date the document is mailed or delivered to the Administrative Law Judge or to the Secretary of the Commission.

i. Proof of service shall be filed with each filed document.

10. One copy of any document or information filed with or supplied to the Public Utilities Commission or the Commission staff relative to any issue in these proceedings which is not otherwise served on the parties or their attorneys pursuant to Paragraph 9 hereof shall be served on the attorney of record for each party, or, if there is no attorney, upon the party.

11. Trade Secret or Privileged data shall be marked as handled in confidence with the procedures set forth in the Commission's and Department's September 1, 1999 Revised Procedures document.

DISCOVERY

12. All requests for information shall be made in writing to the person from whom the information is sought with a copy of the request mailed to all parties of record. No such request shall be provided to the Administrative Law Judge. The party responding to the information request shall provide the information requested to the requesting party within ten (10) days from the date of the request. The information need not be supplied as a matter of course to all other parties. In the event the information cannot be supplied within such ten-day period, the responding party shall notify the requesting party, in writing, within five days of the request to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon Motion of a party.

13. Further discovery may be had herein in accordance with Minnesota Rules, parts 1400.6700 - 1400-6900.

PREFILED TESTIMONY

14. Prefiled direct and rebuttal testimony shall not be bound into the record but shall be received as an exhibit to the record. Prefiled testimony not offered into the record shall be considered withdrawn and the witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and the parties no later than five days prior to commencement of the evidentiary hearing.

ORDER OF TESTIMONY

15. Testimony in the evidentiary hearing shall be offered in the following order: Applicant, Department; and any other Intervenor in the order of their intervention. Cross-examination of the witnesses shall be conducted by the parties in the same order; provided, however, that parties shall not cross-examine their own witnesses. Except for cause shown, any new affirmative matter that is not offered in reply to another party's direct case shall not be offered in rebuttal testimony and exhibits;

provided, however, that the parties may raise in rebuttal testimony affirmative matters in response to statements made by members of the public whether or not the issue was previously a part of that party's direct case.

16. No later than five days prior to the commencement of the evidentiary hearings herein, each party shall submit to the Administrative Law Judge, the Commission and the other parties, a list of that party's witnesses and the order in which those witnesses will appear, indicating, if necessary, a time certain for testimony known to the party calling the witness. The final order of testimony will be as established by the Administrative Law Judge.

17. Members of the public shall be permitted to question the Company as well as any Intervenors present. The Company and Intervenors present are expected to respond to the public's questions. Statements made by members of the public may be considered substantive evidence in the discretion of the Administrative Law Judge.

EXAMINATION OF WITNESSES

18. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

19. Except for cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states in writing its objection with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other parties no later than five days prior to commencement of the evidentiary hearings. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony which is not objected to shall be admitted during the evidentiary hearings without the necessity of laying a foundation for the testimony.

MISCELLANEOUS

20. Upon request of a party, a final prehearing conference may be held on a date determined by the Administrative Law Judge. The purpose of this prehearing conference would be to mark exhibits to be offered at the hearing, including exhibits to be offered upon cross-examination, and portions of depositions to be introduced into the record. In the unusual case where the attorney for a party believes that an exhibit should not be disclosed to the opposing parties prior to oral examination, he or she may present a copy of the exhibit to the Administrative Law Judge with a brief memorandum of explanation in support and circulate copies of the exhibit to the other parties at the time of cross-examination.

21. Parties are encouraged to stipulate evidence not in dispute and to narrow the scope of contested issues to the matters actually in dispute. All stipulations will be subject to public testimony to be received, acceptance by the Administrative Law Judge, and review by the Commission, which shall include the opportunity for the Commission or its staff to examine any witness on the record irrespective of the existence of a stipulation between the parties with respect to such testimony.

22. This Order is effective immediately and may be modified by the Administrative Law Judge for cause.

Dated this 22nd day of January, 2004

/s/ Allan W. Klein

Allan W. Klein

Administrative Law Judge