

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

In the Matter of the Application of AWA  
Goodhue Wind, LLC, for a Large Wind  
Energy Conversion System Site Permit  
for the 78 MW Goodhue Wind Project in  
Goodhue County

**FIRST PREHEARING ORDER**

A prehearing conference was held before Kathleen D. Sheehy, Administrative Law Judge, on November 19, 2010, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Todd J. Guerrero, Fredrickson & Byron, PA, 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402-1425, appeared for AWA Goodhue Wind, LLC (Applicant).

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared for the Department of Commerce, Office of Energy Security, Energy Facility Permitting Staff (Department or OES/EFP). Deborah Pile and Matthew Langan also participated on behalf of the Department.

Stephen Betcher, County Attorney, and Carol Lee, Assistant County Attorney, 454 West Sixth Street, Red Wing, MN 55066, appeared for Goodhue County.

Daniel S. Schleck, Mansfield Tanick & Cohen, PA, 1700 US Bank Plaza South, 220 South Sixth Street, Minneapolis, MN 55402-4511, appeared for the Coalition for Sensible Siting, the City of Zumbrota, and the City of Goodhue.

Carol Overland, Attorney at Law, P.O. Box 176, Red Wing, Minnesota 55066, appeared for Goodhue Wind Truth.

Patrick J. Hynes, Strobel & Hanson, PA, 406 West Third Street, Suite 200, Red Wing, MN 55066, appeared for Belle Creek Township.

Commission staff members Bob Cupit and Tricia DeBleeckere participated in the prehearing conference.

Based upon the discussions during the prehearing conference, the Administrative Law Judge makes the following Prehearing Order.

**IT IS HEREBY ORDERED:**

**Intervention**

1. Several parties filed Petitions to Intervene before the Prehearing Conference, and at the conference the Applicant stated that it had no objection to these intervention petitions. Accordingly, the intervention petitions of Goodhue County, the City of Zumbrota, the City of Goodhue, the Coalition for Sensible Siting, Belle Creek Township, and Goodhue Wind Truth were granted. Those entities have full party status in this matter.<sup>1</sup>

2. Members of the public need not become formal parties to participate in the hearing. They may offer either oral or written testimony; they may offer exhibits for inclusion in the record; and they may ask questions of persons testifying.<sup>2</sup> Any person may “subscribe” to the E-docket system on the Commission’s website ([www.puc.state.mn.us](http://www.puc.state.mn.us)) for the purpose of receiving electronic notice when documents are filed in this matter. Follow the link called “Subscribe to a Docket,” insert the email address, select docket no. 08-1233, and click “Add to list.” An email message will then be sent to the listed email address, which a subscriber must confirm by responding to the email. Any person desiring to become a formal party, however, must file a petition to intervene.

3. Any other persons who wish to intervene in this proceeding must file a written petition to intervene, as set forth in Minn. R. 1400.6200, subp. 1, and 1405.0900, subp. 1 (2009), with the Administrative Law Judge **no later than December 20, 2010**. Any objection to a petition shall be filed within seven business days of service of the petition. The petition shall be served upon all parties, pursuant to the E-service list in effect at the time of the petition. A Notice of Appearance shall be filed with the petition.

4. After the deadline for intervention and any associated proceedings has passed, service shall be limited to persons who are parties to this contested case hearing. Participants and other persons interested in monitoring this docket may do so by subscribing to the E-docket system.

5. OES/EFPP is not participating in this matter as a party, but as a participant, given its role as an advisor to the Commission.<sup>3</sup>

**Issues for Hearing**

6. The Commission has identified the following matters for hearing:

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<sup>1</sup> Transcript of Prehearing Conference at 5-6 (Nov. 19, 2010).

<sup>2</sup> Minn. R. 1405.0800.

<sup>3</sup> See Letter to ALJ from counsel for OES/EFPP (Dec. 3, 2010).

- Development of a record on every standard in Article 18 of the Goodhue County Ordinances on Wind Energy Conversion Systems that is more stringent than what the Commission has heretofore applied to large wind energy conversion systems (LWECS), for the purpose of making recommendations regarding whether the standard should be adopted for LWECS in Goodhue County;

- Development of a record on the question of “good cause” as that term appears in Minn. Stat. § 216F.081, for the purpose of making recommendations on whether there is good cause for the Commission to not apply the standard to LWECS in Goodhue County; and

- Development of a record to determine whether there is sufficient evidence regarding health and safety to support two specific portions of Article 18: the 10-rotor diameter setback for nonparticipating residents, contained in Section 4, and the stray voltage requirements, contained in Section 6.

### **Preliminary Issues**

7. During the prehearing conference, the Administrative Law Judge requested that the parties submit proposals for identifying the issues for hearing and assigning the burden of proof. Most of the parties generally identified some of the setback requirements in Section 4 of Article 18 and Section 6 (the stray voltage requirements). These are the sections specifically referenced in the Notice and Order for Hearing, but the Commission did not limit the scope of this proceeding to those sections. Most the parties (except for the Applicant) also argued that the Applicant bears the burden of proving any disputed facts.

8. **By December 20, 2010**, the parties shall provide a written submission to the Administrative Law Judge:

- A. Identifying the specific sections of Article 18 (**by section and subdivision**) that they believe are more stringent than those recommended by OES/EFP for this project;<sup>4</sup>
- B. Stating whether the sections specified above expressly conflict with the standards proposed by OES/EFP, merely supplement those standards, or address areas the Commission has not regulated in the past;

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<sup>4</sup> The recommended standards appear to be based on the Commission’s order establishing general wind permit standards, as modified by the Applicant’s agreement in this case to increase the setback from non-participating dwellings. See *In the Matter of Establishment of General Permit Standards for the Siting of Wind Generation Projects Less than 25 Megawatts*, Order Establishing General Wind Permit Standards, Docket No. E,G-999/M-07-1102 (Jan. 11, 2008).

- C. Stating which of these specific sections should be applied as a condition of any permit to be issued to the Applicant;
- D. Describing any material facts regarding those standards that are in dispute; and
- E. Describing the type of evidence that the party would intend to offer at hearing in support of those material factual issues.

9. After receipt of the above submissions, the Administrative Law Judge will issue an order scheduling the hearing and setting other prehearing deadlines for the filing of written testimony. Any entity participating as a full party will be required to pre-file written testimony; the hearing itself will be limited to the receipt of pre-filed testimony into evidence and cross-examination of sponsoring witnesses. The hearing will be scheduled expeditiously. The Administrative Law Judge expects that the hearing will take no more than three to five business days.

### **Legal Issues**

10. For any disputed issues of material fact, the Administrative Law Judge has determined that the Applicant would have the burden of proof.<sup>5</sup>

11. The parties have also suggested that certain preliminary legal issues need to be resolved before any testimony is filed or a hearing is scheduled in this matter. Belle Creek Township has asserted that “good cause” as used in Minn. Stat. § 216F.081 should be defined as a threshold matter and proposed a schedule for resolving this on summary disposition. The Administrative Law Judge concludes that “good cause” is a legal standard to be applied based on the factual record to be developed in this case. The Administrative Law Judge does not believe that defining the standard through a dispositive motion will narrow the issues for hearing and consequently will not set a dispositive motion schedule on this issue. The parties may submit legal argument on the meaning and application of the good cause standard in their closing memoranda.

12. The Applicant asserted that there are no disputed issues of fact and that it is entitled to a permit as a matter of law. It has stated that it intends to move for summary disposition on the merits as soon as possible. It also has argued that it should not be responsible for the cost of a contested case hearing. The Commission has not delegated to the Administrative Law Judge, however, the responsibility to make a recommendation as to whether the Applicant is entitled to a permit under Minnesota Statutes chapter 216F based on the existing record or to make a recommendation on any issue regarding financial responsibility for the costs of a contested case hearing. Consequently, the

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<sup>5</sup> See Minn. R. 1400.7300, subp. 5 (2009).

Administrative Law Judge will not set a dispositive motion schedule on these issues either.

13. As noted above, the parties may submit legal argument on how the good cause standard should be applied, if at all, in their closing memoranda. In particular, the Administrative Law Judge would like the parties to brief the issue whether Minn. Stat. § 216F.081 (2008) is intended to apply only to counties that have assumed the responsibility to process applications and issue permits for LWECS with a combined nameplate capacity of less than 25 MW, pursuant to Minn. Stat. § 216F.08. In addition, the parties may submit argument as to whether Article 18 is an “ordinance standard for LWECS” within the meaning of Minn. Stat. § 216F.081. In other words, should an ordinance that, by its own terms, is applicable only to commercial wind energy conversion systems of 1 to 5 MW be considered to be an ordinance standard for LWECS?

14. Goodhue County and the Coalition for Sensible Siting, the City of Zumbrota, the City of Goodhue, and Goodhue Wind Truth have argued that the legal issue here is whether the County had a rational basis for adopting the ordinance. This contested case is not a due process challenge to the validity of the ordinance. The Commission has requested development of a record on the scientific support for the 10-rotor diameter setback and stray voltage requirements adopted by the County, not the process by which the County adopted those standards. The Commission is attempting to answer for itself the question whether its own wind permitting standards for LWECS should be modified in this case to include those contained within the Goodhue County ordinance.

15. The Office of Administrative Hearings has adopted the Aspirations on Professionalism that were developed by the Minnesota State Bar Association and adopted by the Minnesota Supreme Court. It is the policy of the Office of Administrative Hearings that contested case hearings shall be conducted expeditiously and that counsel and parties shall cooperate to avoid delay. Non-meritorious objections and irrelevant or repetitious matters shall be avoided. Counsel shall maintain the dignity of the profession and shall maintain a respectful attitude towards each other, the Administrative Law Judge, and other participants. Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Any person who repeatedly violates this paragraph may be excluded from participation by the Administrative Law Judge.

Dated: December 8, 2010.

s/Kathleen D. Sheehy  
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KATHLEEN D. SHEEHY  
Administrative Law Judge