

February 12, 2020

Via eDockets

Mr. Will Seuffert  
Executive Secretary  
Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101-2147

RE: **In the Matter of the Application of Walleye Wind, LLC for a Certificate of Need for the Walleye Wind Project and Associated Facilities in Rock County**

**In the Matter of the Application of Walleye Wind, LLC for a Site Permit for the Walleye Wind Project and Associated Facilities in Rock County**

**EERA Comments on ALJ Report Process**

**PUC Docket No.** IP7026/CN-20-269, WS-20-384

Dear Mr. Seuffert:

On March 1, 2021, Walleye Wind, LLC (Walleye Wind) filed a letter proposing an “alternative process” in the conduct of the public hearings in the above matters.<sup>1</sup> Walleye Wind has proposed a change to Commission staff’s February 24, 2021, recommendation that the Commission request a full Administrative Law Judge (ALJ) report, including findings and recommendations.<sup>2</sup>

Under this proposed process change Walleye Wind would submit proposed findings directly to the Commission rather than to an Administrative Law Judge. Walleye Wind asserts that the suggested process change would shorten the permitting timeframe while still allowing for development of a thorough record.

## Background

In recent siting dockets before the Commission, two types of ALJ reports have been used.

- Summary of Public Testimony. In the Elk Creek Solar proceedings (Dockets IP-7009/CN-19-351 and IP-7009/GS-19-495) the Commission referred the matter to the Office of Administrative Hearings (OAH) and requested appointment of an ALJ to serve as the hearing examiner and to

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<sup>1</sup> Walleye Wind, *Comment on Proposed Decision Options*, March 1, 2021 (eDocket ID: [20213-171470-01](#))

<sup>2</sup> Commission Staff, *Briefing Paper*, February 24, 2021 (eDocket ID: [20212-171307-01](#)). The Commission Staff’s briefing paper identified a number of decision options related to the Commission’s decision on whether to issue a Draft Site Permit for the proposed Walleye Wind Project in Rock County, but Walleye Wind’s comments addresses only the type of report issued by the ALJ.

prepare a summary report of public testimony, generally consistent with the timeline proposed by EERA staff in its comments.<sup>3</sup>

- Full ALJ Report with Findings and Recommendations. In the Buffalo Ridge Wind proceedings (IP-7006-WS-19-394) the Commission referred the matter to the OAH and requested that the ALJ prepare a report specifically including findings of fact, conclusions of law, and recommendations on the merits of the LWECs site permit application, and, if a site permit was recommended, the ALJ provide recommendations on conditions to be included in the site permit.

In an Order issued October 20, 2020, the Commission accepted the certificate of need and site permit applications for the Walleye Wind Project as complete, authorized use of the informal review process under Minn. R. 7829.1200, and also authorized that a joint public hearing be held on the certificate of need and site permit applications.<sup>4</sup> The October 20, 2020 Order did not specify the preparation of either a full ALJ report with findings or recommendations or a summary report of public testimony.

Department of Commerce Energy Environmental Review and Analysis (EERA) staff had consistently recommended the Commission request a full ALJ report in its filings in these proceedings.<sup>5</sup> EERA staff believes that a full ALJ report with recommendations provides an unbiased, efficient, and transparent method to air and resolve any issues that may emerge as the record continues to develop. Requiring the full ALJ report reduces the burden on Commission staff and helps to ensure that the Commission has a robust record on which to base its decision

## Comparison of Process Timelines

Walleye Wind asserts the proposed process will shorten the permitting timeframe but does not provide detail on how the proposed process would move forward. In the absence of a more fully developed concept, EERA staff suggests the Elk Creek Solar proceedings as a basis of comparison.

In order to better understand the potential timing differences between the proposed processes, EERA staff compared the timelines for between the public hearing and the Commission's final order for the recently permitted Elk Creek Solar and Buffalo Ridge Wind applications in **Table 1**. Although all proceedings are unique, the two proceedings are relatively recent, the Commission referred both for an informal review, and the files could be readily accessed to allow for a quick turnaround.

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<sup>3</sup> Commission, Order Accepting Applications as Substantially Complete and Directing Use of Informal Review Process, December 23, 2020 (eDocket ID: [201912-158561-01](#))

<sup>4</sup> Commission, *Order Accepting Applications as Complete, Establishing Review Procedures, and Granting Variances*, October 20, 2020 (eDocket ID: [202010-167530-01](#) )

<sup>5</sup> EERA, Comments and Recommendations, July 31, 2020 (eDocket ID: [20207-165478-02](#) ) see EERA Proposed Concept Schedule at Attachment 1; Comments and Recommendations, December 9, 2020 (eDocket ID: [202012-168895-01](#)), at p. 5 and Table 2: EERA Concept Schedule; Comments and Recommendations on Draft Site Permit, February 12, 2021 (eDocket ID: [20212-170942-01](#)), at p. 11.

*Table 1: Process Timeline Comparison*

Milestone	Elk Creek Solar (ALJ Summary Report of Public Testimony)		Buffalo Ridge Wind (ALJ Report with Findings and Recommendations)	
	Date	Days from Hearing	Date	Days between milestones
Public Hearing	7/23/20	0	7/22/20	0
Close of Public Comments	8/10/20	18	8/3/20	12
Applicant Proposed Findings and Recommendations	8/20/20	28	8/21/20	30
EERA Comments on Proposed Findings	9/24/20	63	9/4/20	44
Applicant Response to Public Comments	10/5/20	74	8/21/20	30
ALJ Report	10/9/20	78	10/1/20	71
Exceptions	N/A	N/A	10/19/20	89
Commission Staff Briefing Paper	11/19/20	119	11/25/20	126
Commission Meeting	11/25/20	125	12/3/20	134
Commission Order	12/31/20	161	1/5/21	167
<b>Total Duration</b>	<b>161 days</b>		<b>167 days</b>	

## Other Issues

EERA staff is unaware of any contested issues at this time. However, under Minn. R. 7854.0900, subp. 5, anyone may request a contested case hearing during the comment period on the Draft Site Permit. As the issue currently before the Commission is whether to issue a Draft Site Permit for public comment, it is premature to determine whether a contested case proceeding is warranted.

Although at present there do not appear to be any issues that merit a contested case proceeding, the project has evolved since the initial CN and site permit applications in July 2020, and the record continues to develop. Walleye Wind submitted amended CN and site permit applications in November 2020 to reflect the status of landowner negotiations and narrow the proposed turbine model. There have been two site permit applications and two layouts.<sup>6</sup> The record continues to be developed on several issues including:

- wind rights, with an update due this month
- turbine layout – clarification on primary and alternate turbine locations
- the impact of shadow flicker along Interstate 90

<sup>6</sup> The second and current layout is largely consistent with the layout shown in the November 2020 amended application but has dropped one turbine location and turbines have been renumbered to better differentiate primary and alternate locations.

With two site permit applications, two layouts, and continued record development on a number of issues, EERA staff believe it is beneficial to have the ALJ prepare a full report with findings of fact, conclusions of law, and recommendations on permit conditions. The time savings under the summary report process does not, in EERA staff's judgment, outweigh the value of a full ALJ report.

These comments are based on EERA staff review of the applications and the record to date. EERA staff looks forward to the Commission's consideration of these issues on March 4, 2021.

Sincerely,

A handwritten signature in black ink that reads "Suzanne Lamb Steinhauer". The signature is written in a cursive, flowing style.

Suzanne Lamb Steinhauer  
EERA Environmental Review Manager