

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| Nancy Lange | Chair |
| Dan Lipschultz | Commissioner |
| Matthew Schuerger | Commissioner |
| Katie J. Sieben | Commissioner |
| John A. Tuma | Commissioner |

In the Matter of Possible Rulemaking to
Amend Minnesota Rules Chapter 7854

ISSUE DATE: September 26, 2018

DOCKET NO. E-999/R-18-518

ORDER DENYING PETITION

PROCEDURAL HISTORY

On July 31, 2018, Goodhue Wind Truth, an advocacy group in wind siting dockets and in rulemaking dockets, filed a rulemaking petition under Minn. R. 1400.2040 and 1400.2500 to amend Chapter 7854 of the Commission's rules, governing site permits for Large Wind Energy Conversion Systems.

On August 2, 2018, the Commission issued a notice seeking comments on the petition.

By August 27, 2018, the Commission received comments on the petition from: Dodge County Concerned Citizens; Kristi Rosenquist; Goodhue Wind Truth; Rochelle Nygaard; Marie McNamara; Dorene Hansen; Xcel Energy; Wind on the Wires; the Department of Commerce, Energy Environmental Review and Analysis staff (EERA); Clean Energy Economy Minnesota; Geronimo Energy, LLC (Geronimo Energy); EDF Renewables; Sean Gaston; Invenergy Wind Development North America LLC (Invenergy); Minnesota Center for Environmental Advocacy (MCEA); and Avangrid Renewables, LLC (Avangrid).

On August 28, 2018, Goodhue Wind Truth filed a request for a reply comment period.

On August 30, 2018, the Commission issued a notice denying that request.

On September 20, 2018, the petition came before the Commission.

FINDINGS AND CONCLUSIONS

I. Rulemaking Petition

Minn. Stat. § 14.09 and Minn. R. 1400.2040 and 1400.2500 govern the requirements for a rulemaking petition. The statute requires that the petition state the specific action requested and the need for that action. The rules require that the petition state the petitioner's name, address, the group represented, and the reasons for requesting that the rule be adopted, amended, or

repealed. Under the statute, an agency has 60 days from the date of the filing to make a written decision on the petition.

Goodhue Wind Truth's rulemaking petition requests that the Commission initiate a rulemaking proceeding to amend Chapter 7854 of the Commission's rules governing site permits for Large Energy Wind Conversion Systems (LWECS). The petition includes the name and address of the petitioner, and the group represented.

Goodhue Wind Truth's petition states that the existing rules do not establish sufficient requirements for environmental review and do not include, for example, setbacks for LWECS from homes and other properties. Instead of making decisions on a case-by-case basis, Goodhue Wind Truth recommended that the Commission, informed by years of experience with individual wind siting dockets, amend its rules to establish reasonable setbacks and other standards that address issues such as noise. Goodhue Wind Truth also emphasized the need for rule requirements to enhance public participation by increasing notice requirements and establishing procedures for conducting public hearings.

II. Comments on the Petition

A. Comments in Support of the Petition

Dodge County Concerned Citizens; Kristi Rosenquist; Rochelle Nygaard; Marie McNamara; Sean Gaston; and Dorene Hansen filed comments in support of the rulemaking petition. They are, or have been, parties or participants in separate Commission proceedings involving the consideration of LWECS site permit applications in Goodhue, Freeborn, and Dodge Counties.

Their comments echoed those in the petition and recommended changes that they believe would increase environmental review to more effectively mitigate potential adverse effects of wind projects, including effects on human health and on avian and bat species. They also recommended changes to ensure that the public is more fully informed of potential projects and is given the opportunity to attend pre-application meetings to provide input on proposed project locations. They supported incorporating rule changes to protect the character of rural Minnesota, to ensure that ownership changes among developers are disclosed, and to require that other state agencies with subject matter expertise participate in wind siting dockets.

B. Comments in Opposition to the Petition

Xcel Energy; Wind on the Wires; Clean Energy Economy Minnesota; Geronimo Energy; EDF Renewables; MCEA; Invenergy; and Avangrid opposed the rulemaking petition.

They stated that the rulemaking petition does not adequately identify a basis for rule changes, that the existing rules provide sufficient project evaluation criteria and environmental review, and that the Commission currently has the flexibility to make informed decisions based on the record developed in individual cases. They stated that the rules (Minn. R. 7854.0500, subp. 7, for example) require applicants to address various factors, such as noise, and that more specific conditions can be placed on individual projects depending on the facts of a case. They also stated that the rules reasonably balance the priorities of local communities and the benefits of wind development.

The EERA stated that the rulemaking petition inaccurately characterizes the existing rules and that to the contrary, the rules contain sufficient evaluation criteria and provide for adequate environmental review of proposed projects. The EERA also stated that under the current rule structure, the Commission has flexibility to set forth additional conditions on a case-by-case basis, depending on the specific project at issue.

III. Commission Action

The rulemaking petition complies with the applicable content requirements by including the petitioner's name and address, the group represented, and the reasons for amending the existing rules. Comments challenging the petition are primarily related to the sufficiency of the petition's claims, rather than its completeness.

Having considered the petition and comments filed, the Commission is not persuaded that now is the time to consider possible amendments to its wind siting rules, Chapter 7854. The Commission currently has an open and ongoing rulemaking proceeding concerning power plant siting,¹ the outcome of which would likely inform the scope and structure of any future rulemaking proceeding on the Commission's other siting rules.

Further, the varied comments received in this docket suggest that there is not informed consensus on many issues that continue to be developed in individual cases, which provide a better forum for identifying and addressing project-specific issues.

For these reasons, the Commission will deny the rulemaking petition without prejudice.

¹ *In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, Minnesota Rules, Chapters 7849 and 7850; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines, Minnesota Rules, part 7829.2550, Docket No. E,ET,IP-999/R-12-1246.*

ORDER

1. The Commission hereby denies the rulemaking petition without prejudice.
2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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