

May 1, 2018

Mr. Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
127 7th Place East, Suite 350
Saint Paul, MN 55101-2147

RE: Agency Comment on Confidential Settlement Agreement and Joint Recommendation and Request:
Bent Tree Wind Farm (Docket No. ET-6657/WS-08-573)

Dear Mr. Wolf:

On April 19, 2018, Wisconsin Power and Light (WPL) filed two Confidential Settlement Agreements along with Joint Recommendations and Requests.¹ On April 24, 2018, the Commission issued a notice of agency comment period² requesting input on (1) what action the Commission should take in response to the filings and (2) any other issues or concerns related to this matter. Department of Commerce Energy Environmental Review and Analysis (EERA) staff have reviewed WPL's filings and are providing the following comments on items 1-3 of the Joint Recommendation and Request as they relate to noise compliance.

(1) Dismissal of the Motion and all Prior and Current Complaints

EERA staff views the resolution of ongoing unresolved complaints about low frequency noise that gave rise to the Commission's August 24, 2016 order³ as a separate issue from the audible noise compliance issues that have emerged as a result of the Phase I and Phase II sound monitoring.^{4, 5} Per our February 8, 2018 submittal, EERA staff believes that with the completion of the "on/off" monitoring campaign WPL has fulfilled the requirements of the Commission's August 24, 2016 order to conduct monitoring consistent with current

¹ Wisconsin Power and Light. April 19, 2018. Notice of Confidential Settlement Agreement. eDockets No. [20184-142136-01](#), [20184-142136-02](#).

² Minnesota Public Utilities Commission. April 24, 2018. Notice of Comment Period. eDockets No. [20184-142270-01](#).

³ Minnesota Public Utilities Commission. August 24, 2016. *Order Requiring Noise Monitoring, Noise Study and Further Study*. eDockets No. [20168-124382-01](#).

⁴ Minnesota Department of Commerce EERA, Bent Tree Wind Farm Noise Monitoring – Post Construction Noise Assessment. eDockets No. [20179-135856-01](#).

⁵ Minnesota Department of Commerce EERA, February 8, 2018. Bent Tree Wind Farm Noise Monitoring – Phase 2 Monitoring Report. eDockets No. [20182-139880-01](#).

EERA guidance.⁶ EERA believes that completion of requirements in the August 24, 2016 order is sufficient to resolve these unresolved complaints. Therefore, we do not oppose this request to dismiss the complaints. EERA, however, sees resolution of audible noise compliance issues as a separate matter.

(2) Termination of Curtailments

EERA's understanding of the Minnesota Pollution Control Agency (MPCA) noise rules (Minn. R. 7030) and the condition in Section E3 of the Bent Tree site permit is that if the Langrud or Hagen properties were not occupied *and remained unoccupied* they would no longer be considered residential receptors. As a result, residential noise limits would not apply, and the noise levels measured would not exceed the applicable standard for a non-residential, agricultural area. It follows that the curtailment measures would no longer be necessary.

The language of the Joint Recommendation and Request, however, does not specifically address the possibility of future occupation of the Hagen or Langrud properties. If the Hagen or Langrud properties are returned to residential use, the residential noise limits will again apply. It is EERA staff's understanding that MPCA's noise standards are protective standards, similar to air quality standards. Therefore, new residents could not waive WPL's duty to meet noise standards even if they may be willing to live with violations of the standard in exchange for payment or through some other agreement. Therefore, the results of the Phase I and Phase II sound monitoring and the noise compliance issue would likely need to be reopened if the Hagen or Langrud properties were returned to residential use.

(3) No Further Sound Monitoring

We do not oppose this request; however, choosing not to do more noise monitoring now based on the Phase I and Phase II DNV-GL monitoring results does not prevent the Commission from following up on complaints from other residents in the project area in the future. As EERA staff noted in its April 30, 2018 comments and recommendations, the 2011 WPL sound monitoring report appears to be a reasonably complete evaluation of the wind turbine contribution to noise levels at the wind farm.⁷ The monitoring demonstrated that the wind farm's contribution at the selected receptors was below the noise levels identified in Minnesota Rules 7030 at least 95% of the time. The monitoring also revealed that at higher wind speeds the model had somewhat underestimated the actual wind turbine sound. Consistent with past practice, the Commission can continue to rely on the outcomes of the 2011 site characterization to inform decisions on further monitoring at specific receptors if new issues arise as operations continue.

Similarly, the Commission could order additional monitoring based on the 2011 report in the future, as it further defines what "compliance" with state noise standards means. As discussed in our April 30, 2018 comments and recommendations, complex underlying issues regarding compliance with state noise standards have arisen lately in this and other dockets. For example, as illustrated by the WPL "show cause" response filed yesterday,⁸ there is some uncertainty not only over how to define "compliance" with noise standards but also how to accurately monitor and evaluate the wind turbine's contribution to an exceedance.

⁶ *Id.*

⁷ Wisconsin Power and Light. June 21, 2011. Survey of Operational Sound Levels for the Bent Tree Wind Project. eDockets No. [20116-63863-01](#), [20116-63863-02](#).

⁸ Wisconsin Power and Light. April 30, 2018. Response to Show Cause. eDockets No. [20184-142555-01](#).

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Sorting out regulatory "gray areas" regarding compliance with state noise standards is essential to addressing noise issues, complaint handling, and the type and scope of monitoring that might be helpful in the future at this and other LWECS sites.

EERA staff is available to answer any questions the Commission may have.

Sincerely,

/s/ Louise I Miltich

Louise Miltich

Environmental Review Manager

Energy Environmental Review and Analysis

cc: Bret Eknes, Commission Staff

Tricia DeBleeckere, Commission Staff

John Wachtler, EERA Director