

Staff Briefing Papers

Meeting Date: September 20, 2018 Agenda Item **2

Company: Goodhue Wind Truth

Docket No. E999/R-18-518

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

Issues: Should the Commission undertake a rulemaking to amend Minnesota Rules Chapter 7854, and if so, should the Commission appoint an advisory task force?

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Relevant Documents

Date

Minnesota Statute Section 216F

Minnesota Rule Chapter 7854

Goodhue Wind Truth – Initial Petition July 31, 2018

Dodge County Concerned Citizens – Comments August 10, 2018

Comment – Rosenquist August 24, 2018

Comment – PUC Public Comment August 24, 2018

Comment – Goodhue Wind Truth August 24, 2018

Comment – Nygaard August 24, 2018

Comment – McNamara August 24, 2018

Comment – Hansen August 24, 2018

Comment – Xcel Energy August 24, 2018

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Relevant Documents	Date
Comments – Wind on the Wires	August 24, 2018
Comments – DOC EERA	August 24, 2018
Comments – Clean Energy Economy - MN	August 24, 2018
Comments – Geronimo Energy	August 24, 2018
Comments – EDF Renewables	August 24, 2018
Comments – McNamara	August 24, 2018
Comments – Gaston	August 24, 2018
Comments – Invenergy	August 24, 2018
Comments – Minnesota Center for Environmental Advocacy	August 24, 2018
Comments – PUC Public Comment ‘Batch 1’	August 24, 2018
Comments – Avangrid Renewables	August 27, 2018
Goodhue Wind Truth – Request for Reply Period	August 28, 2018
PUC – Notice Denying Request for Reply Period	August 30, 2018

I. Statement of the Issues

Should the Commission undertake a rulemaking to amend Minnesota Rules Chapter 7854, and if so, should the Commission appoint an advisory task force?

II. Overview of the Issue

Goodhue Wind Truth (GWT) has petitioned the Commission, pursuant to Minn. Statute 14.09 and Minn. Rule Chapter 1400, to initiate a rulemaking on Chapter 7854, Large Wind Energy Systems. GWT argued, among other things, that the existing rules do not conform to the statutory mandates to establish criterion for siting and environmental review, and therefore, need revision.

III. Statute and Rule

Rulemaking (and petitions for rulemaking) in Minnesota follows procedures outlined in the Minnesota Administrative Procedure Act (APA), Minnesota Statutes § 14.09.

14.09 PETITION FOR ADOPTION OF RULE. Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The petition shall be specific as to what action is requested and the need for the action. Upon receiving a petition an agency shall

have 60 days in which to make a specific and detailed reply in writing as to its planned disposition of the request and the reasons for its planned disposition of the request. If the agency states its intention to hold a public hearing on the subject of the request, it shall proceed according to sections [14.05](#) to [14.28](#). The chief administrative law judge shall prescribe by rule the form for all petitions under this section and may prescribe further procedures for their submission, consideration, and disposition.¹

Minnesota Rules Chapter 1400 is the Office of Administrative Hearing's rules to implement administrative rulemaking. Minnesota Rules Chapter 1400.2040 outlines the required contents of the petition (name and address of petitioner, the specific action requested, and the articulated need for the action), filing requirements, and requirements of the agency to respond to the petition (within 60 days of receipt).

IV. Procedural History

On July 30, 2018, GWT filed a Petition for Rulemaking (Petition) with the Commission, requesting that the Commission initiate a rulemaking of Minn. Rule Chapter 7854. GWT argued that the existing rules do not conform to the statutory mandates to set siting criterion, do not establish appropriate environmental review procedures, and need revision.

On August 2, 2018, the Commission issued a notice of comment period soliciting input on the Petition. An extension was granted at the request of Wind on the Wires, and the comment period was extended to August 24, 2018.

By August 24, 2018, comments were received by multiple entities, including, non-governmental advocacy or environmental organizations, wind developers, and members of the public. Largely members of the public supported the petition for rulemaking, while the environmental or advocacy groups recommended the Commission deny the petition. GWT filed a supplement articulating specific modifications it believe should be made to Minn. Rules Chapter 7854. Commenter positions are outlined in further detail below.

V. Petition for Rulemaking

GWT filed the Petition for Rulemaking on Minn. Chap. 7854.² The Petition generally included the required filing information. GWT argued that the need for the proposed action was properly articulated; however several parties disagreed that the petition met the filing requirements on two points: specifying the action requested and the need for the action. GWT filed a supplement, during the comment period, that expanded on their initial petition.

¹ See [Minn. Stat. 14.09](#).

² In 2012, Carol Overland (now representing GWT) had submitted a similar petition for rulemaking of 7854, however it was not processed by the Commission as it had requested GWT provide a clarification. See GWT Rulemaking Petition, Attachment C. The requested clarification was never filed, and GWT, with this instant filing, noted it was providing clarification to its original 2012 petition.

Staff views several points made by GWT in support of their request to be the following: 1) siting criteria for Large Wind Energy Systems are currently inadequate (or do not exist) in rule, 2) several recent dockets before the Commission (and issues argued or investigated within them) elucidate the need for a rulemaking (i.e. Freeborn Wind's contested case and issues related to noise, and Bent Tree Wind's compliance review and monitoring on noise) and 3) there is no environmental review included in the current wind siting process. Additionally, GWT argued, as they have in multiple recent filings before the Commission, that wind projects permitted to date have insufficiently applied applicable statutory siting criteria and a comprehensive review of all permitted and in-progress permit applications should be conducted.³

VI. Summary of Comments

The Commission received robust response and comments on the Petition for Rulemaking.

Many industry wind advocates, wind developers, and environmental organizations opposed granting the Petition for rulemaking (or recommended denial of the Petition based on arguments that the petition was insufficient). Those opposed to the rulemaking were:⁴

- Avangrid Renewables
- Department of Commerce Energy Environmental Review and Analysis (DOC EERA)
- Clean Energy Economy Minnesota
- EDF Renewables
- Geronimo Wind Energy
- Invenergy
- Minnesota Center for Environmental Advocacy (MCEA)
- Wind on the Wires (WOW)
- Xcel Energy

In support of the petition, for various reasons, were:⁵

- Doug Eayrs on behalf of Dodge County Concerned Citizens
- Sean Gaston
- Doreen Hansen
- Sue Madson

³ Staff has reviewed this claim, both again for the writing of this brief, as well as following previous claims made in other filings. Staff has not found any substantiation to this claim in any of the dockets permitted in the past several years and all properly applied siting criteria and considerations. Staff did not review every permit issued by the Commission (dating back to 2005) as years-old-permits have exceeded the period in which they can be appealed for inadequacy.

⁴ All of the commenting wind developers have had either recent or on-going applications for wind projects before the Commission.

⁵ Of the members of the public commenting on the proposed rulemaking, all of the commenters are currently residents located in a proposed wind development or previously proposed wind development (Paynesville Wind (permitted and operating), Dodge County Wind (pending), Goodhue Wind (revoked), or Freeborn Wind Project (pending)).

- Marie McNamara
- Colleen Mueller
- Rochelle Nygaard
- Allie Olson
- Janna Swanson

VII. Summary of Issues, Commenter Position and Staff Discussion

A. Completeness of the Application

Minn. Rule 1400.2040 outlines the content requirements for a petition for rulemaking to a state agency (name and address of petitioner, action requested, and a need basis for action requested). Several commenters argued that the GWT Petition should be rejected for either 1) inadequate or lack of a specific requested action or 2) for lack of articulated need for the requested action.⁶ Those commenters argued that GWT expressed a dissatisfaction with the current rules, and cited reference to issues within on-going or active dockets, but did not request specific action or provide a clear basis for need for modification to the existing rules.

GWT supplemented their Petition during the comment period, providing specific examples of modifications it deemed needed to the rule chapter. Additionally, GWT requested the Commission extend the comment period in order to allow further reply. However, the request for an extended comment period was denied by the Commission due the 60-day deadline in which the Commission has to act on a rulemaking petition.

Regardless, staff agrees with the DOC EERA and MCEA⁷ that the original petition minimally fulfills the filing requirements and should be considered. Staff views the Petition as requesting a wholesale modification and review of the Commission Wind Siting Rules, Chapter 7854, and specifically, modification and review of the permit and siting processes, siting criteria, and environmental review procedures. Staff believes that GWT articulated its claimed need for the modifications, and while commenters may believe the claimed need to be insufficient, or baseless, staff believes the request and the merits of it, should be evaluated by the Commission and not outright rejected for insufficiency.

B. Existence of Wind Siting Standards

First, GWT argued that Chapter 7854 fails to address the requirements of Minn. Stat. 216F.05, which outlines the requirements for implementing rules to govern the siting of LWECS.⁸

Staff first notes that the rules, in their existing form, were reviewed for compliance with the statutory requirements via the rulemaking process that was undertaken in 2002 by the EQB.

⁶ See CEEM at 1, Invenergy at 1, WOW at 1, Xcel at 1-2, et.al.

⁷ MCEA at 1, DOC EERA at 2.

⁸ See Minn. Stat. 216F.05.

While GWT argued that the rules were implemented without public comment or public hearing, staff understands it was due to the lack of request from the public for a comment period or hearing, as is typical practice in Minnesota rulemaking procedures.

Additionally, the Statement of Need and Reasonableness (SONAR) for Minn. Rules 4401 (now Chapter 7854) attached to GWT's Petition, at Attachment B, outline a clear basis and comprehensive analysis for the rules in their current form.

The DOC EERA noted in their comments that they believe the current rules serve the process and meet the statutory requirements well. DOC EERA noted that it does not believe that the current wind permit conditions need to be codified in Rule as the Commission needs the "latitude to evaluate and evolve these permit conditions and standards as further information becomes available and the effect of any given permit condition is tested."⁹

Additionally, Geronimo argued that adopting "detailed and overly-prescriptive conditions in rule does little to improve the Commission's process and makes it entirely possible that the process would be less responsive to public input, new information, updated technology and best practices for mitigation."¹⁰ Staff agrees with these points from DOC EERA and Geronimo relating to codification of Commission siting standards. Staff believes the Commission's process currently works well and strikes the appropriate balance between following the prescriptive process and procedures in rule while allowing flexibility in considering technological changes as well as site-specific factors.¹¹

Largely comments from members of the public argued for the creation of siting criteria in rule (as the commenter seems to believe that there are no baseline conditions being utilized) and should be established to provide protection to residents from large scale wind projects. Some arguments were relating to the distance wind turbines can be placed on neighboring properties from non-participating homes. Staff has concern with solidifying setbacks or other standards in rule as doing so would reduce the Commission's flexibility in changing permit conditions as wind turbines size and technology evolves.

In short, the Commission's existing siting standards have worked well for the thousands of megawatts of wind the Commission has permitted. Commission and DOC EERA staff continually review standards and policy changes in neighboring states (and across the nation) and monitors any available peer-reviewed articles and studies to ensure that the Commission siting process (and existing permit evaluation) is robust, accurate, and is responsive to industry changes. The current process allows for this flexibility while ensuring that requisite consideration is given to a comprehensive list of factors currently articulated in rule.^{12, 13}

⁹ DOC EERA at 2.

¹⁰ Geronimo at 4.

¹¹ DOC EERA notes the unique nature of energy project siting in the numerous factors and subjectivity the Commission needs to apply to each project.

¹² See Minn. Rule 7854.0500.

¹³ Additional comment is articulated by GWT and members of the public regarding the Commission's Order in Docket

C. Commission Dockets Emphasizing Need for Rulemaking

GWT referenced several recent or on-going dockets as the basis and need for a rulemaking, particularly the Bent Tree Wind Project (noise compliance monitoring) and the Freeborn Wind Project (and on-going contested case hearing). As other commenters have noted, these examples, while used as GWT's basis for the 'need' for a rulemaking, could also be viewed in the inverse – as successes in the Commission's permitting process in that the current process has the flexibility available to review and investigate issues as needed (and has been utilized as deemed appropriate by the Commission).

First, GWT referenced the Bent Tree Wind Project and the compliance review into on-going noise complaints. While the Commission ordered additional investigation and monitoring for the Bent Tree Wind Project, staff does not believe that there was ever a definitive conclusion by the Commission that the project violated permit conditions nor does staff believe that modified standards or rules would have changed potential outcomes.¹⁴ As noted by Xcel, the Bent Tree Wind Project issues were likely related to failure to comply with the site permit conditions (if the allegations were to have been ultimately substantiated and affirmed by the Commission).

As for references to the Freeborn Wind docket, the ALJ Report was recently issued in the Commission's first contested case hearing on a wind project.¹⁵ The Commission is likely to take the Freeborn Wind matter up on the same agenda as this Petition, and therefore, no decisions by the Commission will have been ordered on that docket as of the time of the consideration of this rulemaking Petition. Additionally, due to issues raised by members of the public in the Freeborn Wind Project, the Commission utilized a contested case hearing process to further evaluate and consider the issues relating to the project. Staff does not believe, at this time, the yet-to-be decided Freeborn Wind project (or issues related therein) is a basis to initiate a rulemaking.

D. Lack of Environmental Review in Chapter 7854

GWT argued that "requirements for environmental review were neglected" in the development of the original wind rules (originally Chapter 4410, now 7854).

Staff will not spend significant time on this claim, as the EQB, who originally implemented the rules, found that the wind siting process created and outlined in rule was a sufficient alternative

07-1102, which enacted standards for wind projects (smaller than 25 MW) permitted by a county. Staff does not repeat those discussions in this paper as it would cause more confusion than assist in this primer on these issues. Staff is available to discuss those standards with Commissioners as needed, but those standards, while originating from the on-going permit conditions originally established and used by the EQB (and now the Commission) they do not apply to large wind conversions systems discussed herein.

¹⁴ See Commission Order

¹⁵ The Goodhue Wind Project ultimately included a contested case hearing on specific issues, but was not originally processed using the contested case procedures.

form of environmental review (as authorized by Minnesota Statute).¹⁶ Minn. Rule 7854.0500, subp. 7 provides (in part):

The analysis of the environmental impacts required by this subpart satisfies the environmental review requirements of chapter 4410, parts 7849.1000 to 7849.2100, and Minnesota Statutes, chapter 116D. No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECs project.

Therefore staff believes this claim is baseless by reference to the existing rule. Last, DOC EERA recommended that if the Commission grants the Petition, it would not recommend altering the current environmental review content of the existing rule (as they believe the environmental review process for wind is appropriate and works well for the wind siting process).¹⁷

E. Timing of Rulemaking for 7849 and 7859

GWT has argued that a rulemaking should be initiated for Minn. Chapter 7854 as the Commission's rulemaking for 7849 and 7850 has entered the draft phase.¹⁸ Several commenters made note of the timing of the Commission's Chapter 7849 and 7850 rulemaking processes and the potential inefficiencies of overlapping rulemakings.¹⁹

Staff believes that efficiencies and increased clarity could be gained by the creation of more consistent processes and procedures between Power Plant Siting Act (PPSA) and wind siting. However, at this time, it is unknown what the ultimate PPSA procedures will be, and whether they will be compatible with wind siting requirements and timing. Therefore, staff believes it is 1) premature to determine that a rulemaking on Chapter 7854 will be beneficial to the Commission and the state, and 2) if it is found to be beneficial, it is premature (and likely inefficient) to initiate the rulemaking until following the completion of Chapter 7849 and 7850.

F. Miscellaneous Issues

Several diverse issues were argued by members of the public in support of a rulemaking. Staff does not discuss most of these issues in depth in this paper, however is available to discuss situation specifics with Commissioners. Staff views these issues as either having not been substantiated, having specific docket related context, or are too general in nature to address/beyond the scope of this rulemaking petition. Some of the issues include: 1) unsubstantiated allegations of problems at Minnesota-based wind projects, 2) funding mechanisms for noise testing or court proceedings (tax-payer or otherwise), 3) general fears and questions relating to health effects of wind turbines, 4) concerns or issues relating to active projects before the Commission, 5) climate change, and 6) wind energy economics and/or Federal Production Tax Credits.

¹⁶ See GWT Petition, Attachment B - SONAR, at 19-20.

¹⁷ DOC EERA at 3.

¹⁸ GWT Supplemental Comments at 1.

¹⁹ DOC EERA at 3, Geronimo at 5, et. al.

VIII. Staff Discussion and Potential Next Steps

As discussed above staff does not believe it would be efficient or needed to conduct a rulemaking on Chapter 7854 at this time. Following the completion of the Commission's rulemaking procedures on Chapter 7849 and 7850, the Commission may want to consider whether it is reasonable or an efficient use of staff resources to initiate a rulemaking on Chapter 7854 regarding process and procedures (or some larger scope). However, if the Commission wishes to either initiate a rulemaking in response to the GWT Petition, or on its own motion, staff would advise that the Commission provide a clear scope and direction of topics open for consideration (and what is not to be considered) during any rulemaking process regarding Chapter 7854. If any Commissioner is interested in drafting a scope, staff is available to assist.

Additionally, several commenters expressed interest in serving on an advisory committee – if ordered by the Commission. If a rulemaking is granted, staff would recommend issuing widespread notice for advisory committee applicants in order to ensure a well-represented mix of stakeholder perspectives. Last, DOC EERA specifically recommended establishing clear goals for an advisory committee, if utilized.

IX. Commission Decision Alternatives

1. Grant GWT's Petition for Rulemaking
2. Deny the GWT Petition for Rulemaking
3. Take some other action

Staff Recommendation: 2.