

## Staff Briefing Papers

Meeting Date: December 6, 2018 Agenda Item \*\*12

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 reconsider its September 26, 2018 *Order Denying Petition*?

Staff: Bret Eknes [Bret.Eknes@state.mn.us](mailto:Bret.Eknes@state.mn.us) 651-201-2236

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### Relevant Documents

### Date

Staff Briefing Paper for September 13, 2018

September 13, 2018

Commission – Order Denying Petition

September 26, 2018

Goodhue Wind Truth – Reconsideration: Petition

October 16, 2018

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## I. Statement of the Issues

Should the Commission reconsider its September 26, 2018 *Order Denying Petition*?

## II. Overview of the Issue

On September 26, 2018, the Commission denied a petition from Goodhue Wind Truth (GWT) to conduct a rulemaking on Chapter 7854, Large Wind Energy Systems. GWT argued in its rulemaking petition 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. The Commission found the following in its order:

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,<sup>1</sup> 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.<sup>2</sup>

On October 16, 2018, GWT petitioned for reconsideration of the Commission's September 26, 2018 *Order Denying Petition*. The reconsideration petition argued the Commission's decision was arbitrary and capricious and made general comments that related to the Commission's decision being in error.

## III. Previous Commission Action

This matter was heard on September 20, 2018, with all five Commissioners present; the vote was 5-0 in favor of denial.

## IV. Statute and Rule

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

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<sup>1</sup> 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. IP-999/R-12-1246.

<sup>2</sup> See September 26, 2018, *Commission Order Denying Reconsideration*, Doc ID. [20189-146644-01](#)

**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.<sup>3</sup>

Petitions for reconsideration are subject to Minn. Stat. § 216B.27 and Minn. Rules part 7829.3000.<sup>4</sup> Petitions for reconsideration are denied by operation of law unless the Commission takes action within sixty days of the request. If the Commission takes no action on the October 16, 2018 Petition for Reconsideration (Petition), the request would be considered denied as of December 15, 2018. The Commission may also take specific action to deny the petition.

Minn. Stat. § 216B.27, Subd. 1, provides that the Commission may grant a rehearing if it believes sufficient reason exists. Subd. 2 requires that the application for a rehearing shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable. Subd. 3 provides that if after rehearing it appears that the original decision, order, or determination is in any respect unlawful or unreasonable, the Commission may reverse, change, modify, or suspend the original action accordingly.

## V. Petition for Reconsideration

The petition for reconsideration was timely filed and generally included the required information. GWT argues in its introduction that the Commission's decision was arbitrary and capricious, however, staff reads the rest of the petition to argue that the decisions made by the Commission were made in error.

GWT claims the following:

- 1) The Commission has not complied with the legislative mandate to develop wind rules;
- 2) The Chapter 7854 rules are inadequate and insufficient; and,
- 3) Timing of a concurrent rulemaking (7850) is an insufficient basis to delay a rulemaking of Chapter 7854.

## VI. Comments

The Commission received no comments relating to the petition.<sup>5</sup>

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<sup>3</sup> See [Minn. Stat. 14.09](#).

<sup>4</sup> See Minn. Rule [7829.3000](#)

<sup>5</sup> A comment was filed by Carol Overland in the docket during the comment period however it was relating to a different and active docket (Dodge County Wind – 17-306, 17-307, and 17-308).

## VII. Staff Discussion

Staff reviews the arguments individually. First, the argument that the Commission (and previously) the Environmental Quality Board (EQB) has not fulfilled the requirements to established rules is false. The rules exist as MN Chapter 7854 and they address each item outlined in statute. This is an argument that was included in the initial GWT petition for rulemaking and was previously considered by the Commission.

Second, the argument that the wind rules, as-is, are insufficient was included in the initial Petition for Rulemaking and was considered by the Commission. As noted in the Commission's *Order Denying Petition*, the Commission found that there was insufficient consensus on what the scope of a rulemaking would be, as there was not a general agreement about what parts of the rules should be modified. Therefore, as previously noted by staff and the Commission, the current process, permitting on a case-by-case basis (considering the facts and evidence of individual applications) is currently the most reasonable approach.

Third, GWT argued that the wind rulemaking is 'overdue' and should occur now. This argument was also made in the initial petition for rulemaking and considered by the Commission. The Commission noted that the Minn. Rule Chapter 7850 rulemaking was on-going and could inform the Chapter 7854 rulemaking, and therefore, it was reasonable not to initiate the rulemaking at this time. GWT argued that there is no overlap between the two rule chapters, but staff disagrees. Wind applications are often processed in tandem with certificate of need and transmission line applications. Staff's experience has been that it would be less confusing to the public to allow for similar processes and process steps between project types. To initiate a rulemaking now without having certainty of the structure and framework of processes that could be combined would be inefficient, as noted by the Commission's *Order Denying Petition*.

## VIII. Commission Decision Alternatives

1. Grant GWT's Petition for Reconsideration of the September 26, 2018 Order
2. Deny the Petition for Reconsideration of the September 26, 2018 Order
3. Take some other action

Staff Recommendation: 2.