



January 19, 2021

Senator Carrie Ruud
Chair
Environment and Natural Resources Policy
and Legacy Finance Committee

Senator Foug Hawj
Ranking Minority Member
Environment and Natural Resources Policy
and Legacy Finance Committee

Senator David H. Senjem
Chair
Senate Energy and Utilities
Finance and Policy Committee

Senator Nick A. Frenz
Ranking Minority Member
Senate Energy and Utilities
Finance and Policy Committee

Representative Rick Hansen
Chair
Environment and Natural Resources Finance
and Policy Committee

Representative Josh Heintzeman
Republican Lead
Environment and Natural Resources Finance
and Policy Committee

Representative Jamie Long
Chair
Climate and Energy Finance and
Policy Division Committee

Representative Chris Swedzinski
Republican Lead
Climate and Energy Finance and
Policy Division Committee

Dear Senators Ruud, Hawj, Senjem, and Frenz and Representatives Hansen, Heintzeman, Long and Swedzinski:

Minn. Stat. § 216E.18, subdivision 1, provides that the Public Utilities Commission must submit a report to you at the end of each even-numbered year regarding the Commission's operations, activities, findings, and recommendations concerning the Minnesota Power Plant Siting Act (Minn. Stat. Chapter 216E). Attached is the Report of the Minnesota Public Utilities Commission.

Please let me know if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads 'Will Seuffert'.

Will Seuffert
Executive Secretary

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Report on the Minnesota Power Plant Siting Act under Minnesota Statutes, Chapter 216E

January 19, 2021

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Reporting Requirement

Statutory Reporting Requirement

Minnesota Statutes (2018), Section 216E.18, subdivision 1 requires the Public Utilities Commission (Commission) to file a report with the Legislature at the end of each even-numbered year regarding the Commission's operations, activities, findings, and recommendations concerning the Minnesota Power Plant Siting Act (Minn. Stat. Chapter 216E). The Report must also contain information on the amounts paid in permit application fees and assessments pursuant to this section of law.

Costs of Preparing Report

Pursuant to Minnesota Statutes (2018), Section 3.197, it is estimated that the costs incurred by the Minnesota Public Utilities Commission in preparing this Report are minimal. Special funding was not appropriated for the costs of preparing this report.

Focus of this Report

This report specifically addresses the Commission's responsibilities for the siting and routing of large electric energy facilities and pipelines.

In 1973 the Minnesota Legislature passed the Power Plant Siting Act. Minnesota Laws 1973, Chapter 591, codified at Minnesota Statutes § 116C.51 through 116C.69, and re-codified in Chapter 216E in 2005. The Power Plant Siting Act requires that any person who wants to build a Large Electric Power Generating Plant (LEPGP) or a High Voltage Transmission Line (HVTL), as those terms are defined in the Act, is required to obtain state approval for a specific site for the plant or a specific route for the transmission line.

The jurisdiction for power plant siting and transmission line routing was transferred from the Minnesota Environmental Quality Board (MEQB) to the Commission by 2005 legislation (Laws of Minnesota 2005, Chapter 97). The 2005 legislation also transferred jurisdiction for wind farm siting (Chapter 216F) and pipeline siting (Chapter 216G) from the MEQB to the Commission. These separate energy-related jurisdictions had been administered in conjunction with the power plant siting and transmission line routing jurisdiction under a single program at the MEQB, labeled the Power Plant Siting Program.

The transfer of jurisdiction from the MEQB to the Commission was made to enhance administrative efficiency. Prior to 2005, the determination on whether a large energy facility

was 'needed' was made by the Commission and the determination on 'where' the facility should be located was determined by the MEQB. The transfer consolidated the permitting and planning requirements for large energy facilities into a single regulatory agency. The previous Commission/MEQB split decision-making authority caused some confusion among the public and sometimes led to delays in permitting. Additionally, enabling the two separate processes to develop in parallel was intended to achieve time and cost efficiencies. Consolidation benefits have arisen from the Commission's jurisdiction of electric generation resource planning (Minn. Stat. § 216B.2422) and electric transmission planning (Minn. Stat. § 216B.2425), in which environmental and locational factors can be considered jointly.

Reporting Agency Unit

The Commission's Energy Facilities staff manages state oversight of proposals to construct or modify large energy facilities in Minnesota, which include fossil fuel electric generation units, transmission lines, solar power generation, wind power generation units, and gas and petroleum facilities. The Commission's jurisdiction encompasses Certificate of Need as well as Site and Route Permits.

Applications for projects subject to the Commission's jurisdiction are electronically filed with the Commission in compliance with state statutes and administrative rules. Joint processing of applications for a Certificate of Need and a Site or Route Permit is allowed. The Commission's procedures for review of proposed large energy facilities incorporate compliance with the Minnesota Environmental Policy Act and provide for broad spectrum public participation, including timely public notice and multiple opportunities for public comment. In addition to the review of permit applications for large energy projects, the Public Utilities Commission has specific jurisdiction related to electric transmission planning. Energy Facilities staff also actively participate in regional transmission planning and coordination efforts conducted by the Midcontinent Independent System Operator (MISO) and the associated Organization of MISO States (OMS) a non-profit, self-governing entity that coordinates state regulatory participation, representation and oversight of regional transmission issues, as well as tracking relevant activities at the Federal Energy Regulatory Commission.

Agency Organization – Commission and the Department of Commerce Energy Environmental Review and Analysis Unit

At the same time the Power Plant Siting Act jurisdiction was transferred to the Commission (in 2005), the staff supporting the Power Plant Siting Program at the MEQB were moved to the Division of Energy Resources (DER) within the Minnesota Department of Commerce. See Minn. Stat. § 216E.03, Subd. 11.

This staff, the Energy Environmental Review and Analysis unit (EERA), is directly administered by the Director of the DER. The EERA unit provides guidance to applicants and permittees, assists in compiling the Commission's record and provides comments on Commission decisions regarding permit applications. The EERA prepares environmental reports, assessments or impact statements, when appropriate. The EERA also provides technical assistance to the Commission on facilities-related matters, including pre-and post-construction compliance review. The EERA staff typically retains 10 full time employees.

To facilitate this unique dual-agency arrangement, the Commission was granted authority to retain Energy Facility Permitting staff to coordinate with the EERA unit, provide public information and assistance, advise the Commissioners prior to decisions, and ensure sound record development. The defense of its permit decisions in the Court of Appeals remains a Commission responsibility.

Commission costs to administer its actions on siting/routing dockets are recovered from fees charged to applicants. Currently the Commission has the equivalent of 4 full time employees that support this program.

Program Expenditures and Budget Overview

The EERA unit independently manages application fees and direct assessment authorities, and, upon request, has provided the following information:

Biennial Expenditures

Program costs included "Necessary and Reasonable Costs Incurred by Permitting" and "Activity and Program Costs." There were no general fund expenditures.

Necessary and reasonable costs must be paid by permittees to cover costs incurred in acting on a permit application. For power plants and transmission lines, see Minn. Statute § 216E.18 subd. 2, 2a, Minn. Rule Part 7850.1800; for wind farms, Minn. Statute § 216F.05, Minn. Rule Part 7854.1500; and for pipelines, Minn. Statute § 216G.02, subd. 3, Minn. Rule Part 7852.4000.

Activity and program costs are paid by a general assessment against utilities as authorized by Minn. Statute § 216E.18, subd. 3.

| Expenditure Type | FY 2019 | FY 2020 | FY 2019-2020 |
|---|--------------------|--------------------|--------------------|
| Necessary and Reasonable Costs Incurred by Permitting | \$1,396,030 | \$862,233 | \$2,258,263 |
| Activity and Program Costs | \$1,219,660 | \$1,470,790 | \$2,690,450 |
| Total | \$2,615,690 | \$2,333,023 | \$4,948,713 |

The major difference in total expenses between FY 2019-2020 and that reported for the previous biennium is due to a decline in direct expenses associated with the Enbridge Line 3 and Sandpiper pipeline projects.

Public Information and Participation

The construction of large energy facilities can affect many landowners, communities, governmental agencies, tribes and other entities. The Power Plant Siting Act emphasizes a principle of broad spectrum public participation. The Commission and the EERA unit manage the siting/routing programs with a strong emphasis on this principle. While the two agencies continue to provide substantial notice via regular mail, web-based information on the Commission¹ and Department² websites contains useful public guidance and is continually updated.

In 2012, the Commission added a Public Advisor position to enhance the public's ability to effectively participate in Commission proceedings, particularly those involving facilities permitting. In addition, the Commission has authorized the EERA unit to appoint project specific advisory task forces that include affected area residents and local officials to assist in the environmental review of a proposed facility when necessary.

¹ <https://mn.gov/puc/>;

² <https://mn.gov/commerce/industries/energy/eera/>

During 2019 and early 2020, the Office of Legislative Auditor (OLA) evaluated the Commission's public participation process. The OLA asked the following research questions:

- **What are PUC's processes and rules for public participation?**
- **To what extent do PUC's structure, processes, and rules facilitate public participation?**
- **To what extent does PUC enforce its rules for public participation appropriately and consistently?**

The OLA made 8 findings and provided 4 recommendations to the Commission on how to improve its public participation efforts.

In response, the Commission has been working diligently over the past year to make changes aimed at improving public engagement in our processes. Specifically, the Commission has adopted a Tribal Engagement and Consultation Policy, is working to rebuild its website to provide more and better information for the public, is working with the Department of Commerce to improve the eDockets system, and has added new positions to support public outreach. The Commission has also initiated consultations with its partner agencies, the Department of Commerce and the Office of Administrative Hearings to improve communication and coordination on the public participation opportunities administered by them during the review process. Improved public engagement is a priority for the Commission and the OLA Report provides some important recommendations to incorporate into the agency's ongoing efforts.

Finally, the Power Plant Siting Act also requires the Commission to hold an annual hearing to advise the public of matters relating to the siting of large electric power generating plants and routing of high voltage transmission lines and to afford interested persons an opportunity to be heard regarding any aspects of the Commission's activities, duties or policies. ALJ Reports summarizing State Agency presentations and the comments received during the public comment periods surrounding the 2019 and 2020 hearings can be found in dockets M-19-18 and M-20-18, respectively.

Operations and Activities in Biennium

Operations: Permits Processed

The following table shows the number and type of projects permitted or amended for fiscal years 2017 and 2018:

| Energy Facility | CY 2019 | CYFY 2020 | CY 2019-2020 |
|---|-----------|-----------|--------------|
| Power Plants ³ | 0 | 1 | 1 |
| Transmission Lines ⁴ | 2 | 2 | 4 |
| Pipelines and Pipeline Amendments ⁵ | 2 | 1 | 3 |
| Wind Farms ⁶ | 1 | 1 | 2 |
| Transmission Line Amendments & Minor Alterations ⁷ | 0 | 3 | 3 |
| Wind Permit Amendments ⁸ | 5 | 2 | 7 |
| TOTAL | 10 | 9 | 19 |

Operations: Total Permitted Wind Capacity

The following table shows the total megawatts of permitted wind energy for CY 2019-2020. Minnesota’s installed wind generation capacity was 3,843 MW in CY 2019 and in CY 2020 it is approximately 4,048 MW⁹.

³ CY 20: 19-345

⁴ CY 19: 17-701, 17-185; CY 20: 19-311, 18-755

⁵ CY 19: 18-752, 19-228; CY 20: 15-137/14-916 reissued

⁶ CY 19: 17-597, CY 20: 19-394

⁷ CY 20: 19-697, 19-918, 17-185

⁸ CY 19: 18-179, 08-1494, 05-1220, 05-1707; CY 20: 05-1707 (withdrawn), *Amendments also include the repowering of wind facilities*

⁹ U.S. Department of Energy, WindExchange 2019 - <https://windexchange.energy.gov/maps-data/321>, 2020 - <https://windexchange.energy.gov/states/mn> (retrieved 12/28/2020)

| | CY 2019 | CY 2020 |
|--|---------|---------|
| Total Permitted Wind Generation Capacity in MN, shown in MW | 3,843 | 4,048 |

Program Activities

1. **Wind Farm Siting.** The number of wind farms (large wind energy conversion systems, LWECS) and total MW capacity permitted by the Commission has generally increased since CY 2016. This is after a few years of decline. In CY 2019, the Commission permitted one LWECS project. The Commission reviewed and approved four repowering permit amendments. These projects include Lake Benton II, Community Wind North, Jeffers Wind, and Fenton Wind. Repowered wind farm projects are projects that were already producing power under previously approved Commission permits and were included in previous totaled installed capacity figures. Repowered projects are reviewed under the permit amendment provisions of Minn. Rule Part 7854.1300.

In CY 2020, the Commission permitted one new project, but amended two permits for repowering. The new project was the Buffalo Ridge 109 MW Wind Farm. The Commission also amended permits for one project originally permitted in 2006. This project was permitted to be repowered, or retrofitted, to use new more efficient and productive technology. The repowered permitted project is the 98.9 MW Mower County Wind Farm. The Commission expects the development of wind projects to continue while the current federal tax credit remains authorized (on December 21, 2020 the Production Tax Credit for wind power projects was given a one-year extension and is now scheduled to be phased out at the end of 2021) and as utilities continue to add renewable energy sources to their energy generation portfolios to meet (and likely exceed) renewable energy generation targets.

Additionally, wind energy is often cost competitive with other sources of energy generation even without subsidies, and the Commission expects wind development will continue as an alternative source of electricity generation (even without mandates or targets). Lastly, wind energy generation is likely going to remain in demand to help companies achieve corporate sustainability goals or as part of company power purchase agreement (PPA) hedging strategies (virtual PPAs).

Other areas of work related to wind farms include:

- a. Approval and use of updated wind site permit conditions
- b. Commission Investigation into Wind Facility Decommissioning
- c. Compilation of wind site data



2. **General Siting.** The Commission permitted one Solar Generation facility CY 2019-2020. In CY 2020, the Commission permitted the Elk Creek 80 MW Solar Generation facility.

3. **Transmission Line Routing.** Four transmission projects were permitted during CY 2019-2020. In CY 2019 the Commission permitted the Huntley-Wilmarth 345 kV line and the Blazing Star 2 115kV Wind Project HVTL. In CY 2020, the Commission permitted the Lake Eunice 115 kV HVTL Upgrade and the Detroit Lakes Public Utilities 115 kV HVTL, amended the Huntley-Wilmarth Route Permit and approved 2 minor alterations to the Cottage Grove 115 kV HVTL and to the Rosemount Line 345 kV HVTL. Looking forward, transmission projects currently in the permitting process include the Plum Creek Wind Farm 345 kV HVTL, the Dodge County Wind Farm HVTL, the Big Bend Wind Farm 161 kV HVTL, and the Frazee to Erie 115 kV HVTL.

4. **Petroleum Pipelines.** The Commission permitted one petroleum pipeline during CY 2019, the Line 4 Relocation project through the Partial Exemption approval process. The Commission also developed and approved an Information Book for the Wescott Pipeline project. The certificate of need and route permit for the Line 3 Pipeline Replacement project was reissued on May 1, 2020 after the EIS was revised for a second time in response to the Minnesota Court of Appeals determination that the EIS was inadequate. The Commission denied the petitions for reconsideration of the orders granting a certificate of need and route permit July 20, 2020. Enbridge filed all required preconstruction compliance filings established under the route permit and began construction of the pipeline on December 1, 2020. On December 29, 2020 the Commission's May 1, 2020 *Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Route Permit as Modified*, as well as its December 9, 2020 *Order Denying Motion for Stay Pending Appeal* were appealed to the Minnesota Court of Appeals.

5. **Rulemaking.** The Commission continues rulemaking for Minn. Rules Chapters 7849 and 7850 to update and modify procedures for siting and routing. The Commission initiated rulemaking, held numerous stakeholder meetings to review the existing language and propose modifications, and staff drafted rule language. The Commission reviewed the draft language and directed staff to make some minor changes to the draft rules and then to go forward with preparing a Statement of Need and Reasonableness (SONAR), seek the required authorizations to publish, and then publish the draft rules. The purpose of the rulemaking is, among other things, to obtain greater clarity, eliminate obsolete provisions, and strive for better coordination within and between the certificate of need and the siting/routing permitting processes.



The Commission continues to refine its requirements for new wind site permits through individual dockets to incorporate evolving technology and information about wind turbines and their impact on communities and the environment.

Conclusions

The Commission concludes that the procedural model for the Power Plant Siting Act, and the corollary wind farm and pipeline siting acts, is generally reasonable. The Power Plant Siting Act is currently undergoing rulemaking efficiencies. The siting and routing of large energy facilities often creates significant public interest and engagement. The Commission's process has fared well throughout even the most contentious projects. The Commission is working to improve efficiency, coordination, and transparency throughout the processes via rulemaking and updating standards when applicable. Based on the experiences of the past two years, and foreseeing the continued improvement of the process, the Power Plant Siting Act continues to be in the public interest.