

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**Findings and Order in the Matter of the Complaint
by Mark Ward regarding Daniel Schleck, the Coalition for Sensible Siting,
Carol Overland, and Goodhue Wind Truth**

Allegations of the Complaint

On December 8, 2011, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Mark Ward regarding Carol Overland and Daniel Schleck. Mr. Ward alleged that Ms. Overland had failed to register as a lobbyist on behalf of Goodhue Wind Truth (GWT) and that Mr. Schleck had failed to register as a lobbyist on behalf of the Coalition for Sensible Siting (CSS). Individuals are required to register as a lobbyist with the Board within five days of being engaged for pay of more than \$3,000 for lobbying activities. Failure to comply with this requirement is a violation of Minnesota Statutes section 10A.03.

In the complaint Mr. Ward states, "Mr. Schleck and Ms. Overland represent parties before the Minnesota Public Utilities Commission lobbying against the certificate of need and site permit applications of AWA Goodhue, LLC for a 78 megawatt wind project in Goodhue County, Minnesota. In connection with these lobbying activities Mr. Schleck and Ms. Overland participated in public hearings and a contested case proceeding, including preparing and filing testimony, briefs and other filings and appearing before the Minnesota Public Utilities Commission."

In support of his complaint Mr. Ward provides copies of documents filed with the Minnesota Public Utilities Commission (PUC) by Ms. Overland on behalf of GWT and by Mr. Schleck on behalf of CSS. The documents include Petitions for Intervention that request recognition of GWT and CSS as a full party to the certificate of need (CN 09-1186) and site (WS 08-1233) dockets under consideration by the PUC. Mr. Ward also provides copies of notices of appearance by Ms. Overland and Mr. Schleck that were submitted to the PUC and to administrative law judges conducting hearings on behalf of the PUC. Mr. Ward also notes that GWT and CSS appear to have participated in other dockets before the PUC, including one dealing with the health effects of wind turbines and a second referred to as the "Bent Tree Project."

Mr. Ward also submits pages from the GWT website (www.goodhuewindtruth.com) and from the CSS website (www.coalitionforsensiblesiting.com) in support of his complaint. According to Mr. Ward, the content of the pages show that "CSS is the fundraising arm for both organizations. GWT's website also states that the organizations have raised over \$100,000 to date to pay for legal fees and other lobbying efforts at local, state and federal levels attempting to fight the AWA Goodhue wind project...." Mr. Ward concludes: "Based on the information provided on the organizations' websites, it is evident that Mr. Schleck and Ms. Overland have been paid more than \$3,000 for their lobbying activities, and, accordingly, should have registered as lobbyists under Minn. Stat. § 10A.03."

The complaint is further supplemented by a copy of an affidavit submitted by Marie McNamara to the PUC which states that Marie and Bruce McNamara founded GWT and maintain a website for GWT. Additionally, the complainant provides a copy of an affidavit by Steve Groth that states that he is the founder of CSS and that CSS maintains a website. Based on this and on information on the GWT and CSS websites, Mr. Ward states, "Given the amount of money raised in this lobbying effort, the Campaign Finance Board should also investigate whether any members for the

Coalition for Sensible Siting or Goodhue Wind Truth should also be registered as lobbyists as individuals who have spent more than \$250 in any year for the purpose of attempting to influence legislative or administrative action in connection with the AWA Goodhue wind project.”

Although it is not specifically mentioned in Mr. Ward’s complaint, a finding by the Board that Ms. Overland and Mr. Schleck are required to register as lobbyists would, by extension, result in violations of the provisions of Chapter 10A by GWT and CSS. An association that spends more than \$500 to be represented by a lobbyist or at least \$50,000 in any calendar year on efforts to influence legislative and/or administrative action is a “principal” under Minnesota Statutes section 10A.01, subdivision 33. A principal is required to file an annual report disclosing the association’s total expenditures to influence legislative and/or administrative action during the prior year. A principal that fails to file the annual report is in violation of Minnesota Statutes section 10A.04, subdivision 6. Therefore, if the allegation that Ms. Overland and Mr. Schleck were required to register as lobbyists is correct, then CSS and GWT were required to file annual reports with the Board.

The Board notified Ms. Overland and Mr. Schleck of the complaint on December 14, 2011. Board staff asked both Ms. Overland and Mr. Schleck specific questions on their duties for GWT and CSS respectively. Although the complaint jointly lists Ms. Overland and Mr. Schleck, and alleges at least a financial relationship between GWT and CSS, the Board investigation proceeded under the premise that the responses of Ms. Overland and Mr. Schleck are separate and may lead to different findings for each individual.

Background Information

Ms. Overland’s and Mr. Schleck’s responses to the complaint contain specific statutory and technical arguments explaining their actions before the PUC. Before reviewing the responses, the Board believes that some context for the statutory intersection between the lobbying registration requirements of Chapter 10A and the authority of the PUC is necessary. Additionally, the specific record for the AWA Goodhue, LLC, site permit and certificate of need requests provides background for the Board’s consideration of the complaint.

If an individual or association attempts to influence one of three types of governmental action, the individual or association may be required to register as a lobbyist. The three types of governmental action are legislative action, the actions of a metropolitan governmental unit, and “administrative action.” The definition of administrative action is provided in Minnesota Statutes section 10A.01, subdivision 2, which states:

"Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule under chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243.

It is necessary to review the statutory framework within which the PUC operates because Mr. Schleck argues, in his response to the complaint, that the siting application submitted by AWA Goodhue, LLC is not a power plant siting under Minnesota Statutes section 10A.01, subdivision 2.

The PUC is the state commission responsible for issuing power plant and powerline siting permits and for granting certificates of need under Minnesota Statutes section 216B.243. Both a certificate of need and a site permit are generally required before the construction of a large

energy facility may begin. A large energy facility is any facility with an intended capacity of 50,000 or more kilowatts.

In the application for a certificate of need the applicant demonstrates that there is a need for the facility. The PUC issues the certificate of need if it determines that the proposed facility will be in the public interest.

In the application for a site permit, the applicant specifies the design, location, and operation of the proposed facility. The PUC is authorized to issue site permits by Minnesota Statutes, Chapters 216E and 216F. Chapter 216E is cited as the Minnesota Power Plant Siting Act and is used to issue a site permit for a large energy facility. A separate siting authority is provided in Chapter 216F for the construction of a large wind energy conversion system (LWECS).

To qualify as a LWECS the wind energy generated by the project must be 5,000 or more kilowatts. Although generally governed by Chapter 216F, a site permit application for a LWECS is in part regulated by the provisions of Chapter 216E. Minnesota Statutes section 216F.02 incorporates sections of Chapter 216E through the following provision:

(a) The requirements of chapter 216E do not apply to the siting of LWECS, except for sections 216E.01; 216E.03, subdivision 7; 216E.08; 216E.11; 216E.12; 216E.14; 216E.15; 216E.17; and 216E.18, subdivision 3, which do apply.

The processes used by the PUC for application and review of a certificate of need or a site permit provide for significant and meaningful public participation. Public notice is given to individuals living near the proposed energy facility of the certificate of need and site permits. The public is encouraged to provide comment, and a specific PUC staff member is assigned to receive and document input regarding the applications before the PUC.

Individuals who provide comments on a certificate of need application or a site permit are attempting to influence the administrative action of the PUC. Not every individual who responds to the request for comments, however, is required to register as a lobbyist. The requirement to register as a lobbyist is triggered only if compensation and/or expenditure thresholds are reached. An individual who is paid more than \$3,000 from all sources in a year for attempting to influence one of the three types of governmental action explained above must register as a lobbyist for all of the associations represented. An individual who is not compensated but who spends more than \$250 of their personal funds in a year, not including the individual's own traveling expenses or any membership dues, attempting to influence one of the three types of governmental action is also required to register as a lobbyist.

AWA Goodhue Wind, LLC

As specified in the complaint, Mr. Ward believes that Ms. Overland and Mr. Schleck were lobbying to influence the PUC decisions on the site permit (PUC docket number WS 08-1233) and certificate of need (PUC docket number CN 09-1186) requested by AWA Goodhue Wind, LLC. The project, commonly referred to as the Goodhue Wind Project, proposes placement of approximately fifty wind turbines in Goodhue County. The projected power generated by the project is over 50,000 kilowatts. Under the definitions provided in Chapters 216B and 216F, the AWA Goodhue Wind project is both a large energy facility that will require a certificate of need under Minnesota Statutes section 216B.243, and a LWECS that will require a site permit under Minnesota Statutes section 216F.04.

The initial request for a LWECS site permit for the Goodhue Wind Project was filed with the PUC on October 24, 2008. A certificate of need was not requested for the project under the belief that a LWECS project does not require a certificate of need. However, on October 15, 2009, a certificate of need application was submitted for the Goodhue Wind Project. This was followed on November 30, 2009, by an order issued by the PUC that stated that a certificate of need is required for the project because it would meet the definition of a large energy facility.

The site permit and certificate of need applications for the Goodhue Wind project is clearly controversial. To facilitate public comment, the PUC requested that the Office of Administrative Hearings (OAH) conduct public hearings on July 21st and 22nd, 2010. Although these opportunities for the public to provide comments were conducted as public hearings for the certification of need docket, the scope of the hearing was expanded to allow for public comment on siting issues as well.

Under certain circumstances, the LWECS siting process in Chapter 216F allows a county to develop standards for the siting of a LWECS within the county's borders. The PUC is required to apply more stringent county standards to a LWECS permit unless the PUC finds good cause not to use the more stringent standards. On October 5, 2010, the Goodhue County Board of Commissioners adopted more stringent standards for the placement of wind turbines than those used by the PUC in evaluating a LWECS site permit. The PUC referred the issue of the Goodhue County standards to the OAH for a contested case hearing on November 2, 2010. One purpose of the contested case hearing was to develop a record that the PUC could use to determine whether there was good cause not to apply the Goodhue County standards. The contested case hearing was held from March 15th to 17th, 2011. The administrative law judge who conducted the hearing issued her findings on April 29, 2011. Based on the findings, the PUC concluded that there was good cause to disregard the Goodhue County standards, and it issued a site permit for the Goodhue Wind Project on August 23, 2011.

The issuance of the site permit did not end the PUC's consideration of the Goodhue Wind Project. Motions for reconsideration have been filed with the PUC, and issues related to the impact of the project on wildlife are still under consideration. As late as February 22, 2012, the PUC held a meeting at which it considered both the site permit and certificate of need dockets for the Goodhue Wind Project.

With this background in mind, the Board considered the following responses of Ms. Overland and Mr. Schleck.

Response of Carol Overland

Ms. Overland responded to the complaint by letter dated January 20, 2012, stating that she is the attorney for GWT and that GWT consists of Bruce and Marie McNamara. Ms. Overland described the services she provides GWT by stating the following:

My duties include advising GWT in their opposition to the AWA Goodhue Wind Project, and in helping them inform this record and contribute to the work of others in similar situations. This includes helping in general information gathering, and drafting of pleadings and testimony, assembling exhibits, and writing briefs. Some of this work is strictly "legal representation" and some of this work is basic grassroots advocacy training in utilizing options for public participation within the administrative, legal, media, and legislative venues.

Board staff asked Ms. Overland about the two Petitions for Intervention she submitted on behalf of GWT and which were included with the complaint. In reference to the petition submitted in February of 2010, Ms. Overland responds:

The Petition for Intervention is for four dockets, two of which are subject to Minn. Stat. §10A.03, subdivision 1, as a Certificate of Need (CoN) docket (09-1186) and a Siting docket (08-1233). The other two dockets are Power Purchase Agreement dockets, 09-1349 and 09-1350, which are not subject to 10A.03, subdivision 1. It is my understanding that the lobbying statute applies to CoN and Siting dockets whether or not I'm representing an admitted party – its focus is on representation of a party, whether a "party" or a "participant" and that the issue is the type of docket, not whether or not we are an intervening party. Regarding participation in the AWA Goodhue dockets, a list of dates appearing before an ALJ or the Commission isn't reflective of "participation" and is only the tip of the iceberg. A Public Comment Hearing for CoN and Siting dockets was held July 21 and 22, 2010, and an evidentiary hearing was held April 15-18, 2011; Commission meetings have been held regularly over the last 4 years, the next one was just noticed for February 2, 2012 for review of AWA Goodhue's Avian and Bat Protection Plan.

Later in her response Ms. Overland refers to the second Petition for Intervention and states:

The Petition of October, 2010 is for only the Siting docket, 08-1233. A narrow aspect of this docket was referred by the Commission to OAH for a contested case. Because it was in a siting docket (08-1233) I am regarding that hearing within the docket as subject to the lobbying registration requirements (although a good faith argument could be made as to whether a contested case regarding applicability of Minn. Stat. §216F.081 is lobbying because it is a narrow sidebar to the siting of the project).

In response to a question on GWT actions before the PUC on other dockets unrelated to the Goodhue Wind Project, Ms. Overland states:

Regarding participation in various dockets – Public Health Impacts, and Bent Tree. GWT has actively participated in the Public Health Impacts of Wind Turbines docket at the PUC, and this is NOT a CoN or Siting docket and 10A is not applicable. As for Bent Tree, a siting docket before the PUC, I did not represent GWT in its participation in the Bent Tree docket. GWT principal Marie McNamara, ...attended to observe because the AWA Goodhue Wind Project was moving towards a similar hearing. Mrs. McNamara wanted to observe the process, discussed it with Bent Tree project opponents, attended the hearing, and made a 3 minute public comment. None of the 10A thresholds of participation or dollar amounts was reached in her participation.

In response to the complaint's allegation that CSS provided funding for GWT, Ms. Overland responded:

The Coalition for Sensible Siting was the source of funding for GWT in the amount of \$10,500.00, from February, 2011 through mid-September, 2011, at which time a payment was made, a billed balance of \$4,317.50 was outstanding and which remains unpaid. CSS has not made any payments since that time and has stated it will make no further payment. All funds billed and received was for Certificate of Need and Siting docket work, and subject to the 10A requirements. GWT is proceeding with funding from its principals, Bruce and Marie McNamara.

In response to a Board staff question on the GWT website referenced in the complaint Ms. Overland explains her relationship to the site as follows:

No, neither I nor Overland Law Office were paid to create and/or maintain the GWT website. That is the full responsibility of GWT, and I and Overland Law Office have nothing to do with it. Further, operating a website is not lobbying under 10A, and this question is not relevant to this investigation.

In response to questions on whether GWT and CSS provided compensation, and if so, the amount of compensation received by calendar year, Ms. Overland provides:

Yes, as above, Carol A. Overland and/or Overland Law Office was paid for services by GWT and Coalition for Sensible Siting. ...The amount paid for GWT representation before the PUC in the AWA Goodhue Certificate of Need (09-1186) and Siting (08-1233) dockets in 2011 was \$12,000.00, \$10,500.00 of which was paid by CSS, the balance by the McNamaras. The amount paid in 2010 was \$4,245.00 – half of which was for assistance in 09-845, which is not lobbying.

Ms. Overland has been registered as a lobbyist in the past. From November 15, 2002, to May 28, 2003, Ms. Overland was registered as the lobbyist for Public Interveners Network, an association that appeared before the PUC on a powerline siting docket that was unrelated to the Goodhue Wind Project. When asked to compare her representation of the Public Interveners Network with her work for GWT, Ms. Overland responded that:

In respect to whether my work for Goodhue Wind Truth is, like Public Interveners Network, similarly subject to 10A, my understanding is that yes, the CoN and Siting work would be deemed lobbying and is subject to the registration and reporting requirements of 10A.

The PUC maintains a searchable website of all documents submitted for any docket before the commission. Along with her response, Ms. Overland provided a printed list from the PUC website of documents submitted by GWT for the Goodhue Wind Power site permit and certificate of need dockets. By board count GWT submitted 130 documents for the site permit docket and 79 documents for the certificate of need docket. Board staff did not examine every document, but some of the GWT submissions to the PUC were not submitted by Ms. Overland, and some documents appear as submissions to both dockets.

In a telephone conversation with staff Ms. Overland offered to register as a lobbyist on behalf of GWT and to provide lobbyist disbursement reports retroactive to 2011. Staff advised Ms. Overland to defer registration and reporting until questions raised by Mr. Schleck on the inclusion of the site permit docket as administrative action had been resolved by the Board.

Response of Daniel Schleck

Mr. Schleck responded to the complaint by letter dated January 23, 2012. In response to a question on his relationship to CSS, Mr. Schleck states:

I have not been retained by CSS. My client is Mr. Steve Groth and he works with the CSS on its matters and in some cases asks me to assist them. With respect to a description of the specific work done for Mr. Groth or the CSS, the details of my discussion are protected as attorney client privileged communications and as such I can't disclose the specifics of this work. However, given the public documents presented with the complaint it is clear that I have intervened on behalf of CSS in MPUC docket IP/WSW-08-1233.

In response to a question on the representation he provided to CSS on dockets before the PUC Mr. Schleck states that:

There were various hearings associated with MPUC Docket 08-1233 that CSS and individuals supporting CSS participated in, including:

1. March 15, 2010 – Testimony on Site Permit
2. October 21, 2010 – Testimony on Site Permit
3. November 23, 2010 – Testimony on Site Permit
4. March 15-17, 2011 Evidentiary Hearings – Evidentiary Issues for Contested Case Hearing
5. June 30, 2011 – Testimony on Granting Site Permit

With respect to the Bent Tree Docket, individuals whose interests are aligned with CSS and who share information, conduct research and support the goals of CSS participated with testimony for this particular project. I personally never appeared in any capacity on behalf of CSS for any hearing for the Bent Tree docket. It was my understanding from my client Mr. Groth, that these individuals represented that they were participating in the Bent Tree Docket on behalf of CSS and other organizations.

Mr. Schleck compared his representation of CSS to the administrative action definition in Minnesota Statutes section 10A.01, subdivision 2, and states:

MPUC Docket 08-1233 deals with the site permit for a Large Wind Energy Conversion System o[r] “LWEC” which is regulated pursuant to Minnesota Statute Section 216F.01, *et.al.* Nowhere in Minn. Stat. 216F are the terms “power plant” or “powerline” used or defined with respect to administrative actions or lobbying. As such, it is unclear that a project for which the MPUC is conducting hearings on any of the activities conducted within MPUC Docket 08-1233 is an “Administrative action” as defined in Minnesota Statute 10A.01.

In response to a question on compensation received for attempting to influence administrative action, Mr. Schleck states:

Given this apparent confusing definition within the statutes, at this point, I would have to say that I did not receive more than \$3,000 for lobbying for CSS in any year, but would reserve the right to modify this response if (the) Minnesota Campaign Finance and Public Disclosure Board clarifies its question regarding its interpretation of Minn. Stat. 10A.

The board asked Mr. Schleck additional questions by letter dated January 26, 2012. Staff noted that in his first response Mr. Schleck only acknowledged representation of CSS for the siting permit docket of the Goodhue Wind Project. Staff asked Mr. Schleck to explain this position given that the Petition of Intervention by CSS requested status as a full party to both the siting permit and the certificate of need dockets. Staff also noted that in the Petition of Intervention, one of the rationales provided to accept CSS as a full party to the dockets was that CSS had already been actively participating in the Goodhue Wind Project certificate of need process. In response, Mr. Schleck states:

The Coalition for Sensible Siting was not formed with the Minnesota Secretary of State until November 10, 2010. The Petition for Intervention was not filed with the Minnesota Public Utilities Commission (“PUC”) until November 12, 2010 (the “Petition”). Additionally, without trying to “split hairs,” the Petition states that members of CSS, not CSS itself had previously participated in the Certificate of Need Docket.

Secondly, when the decision to intervene was initially contemplated, it was unclear whether the Certificate of Need or the Siting docket (PUC Docket 08-1233) was at issue before the PUC. As the matter developed, it is clear from the record of the Siting docket, that the controversy and testimony of CSS related to the Siting docket. Therefore, the proper conclusion with respect to all the facts taken into account is that CSS participated in the Siting docket and did not significantly participate in the Certificate of Need docket for the AWA Project.

Staff requested that Mr. Schleck provide the legal and factual basis for his position that the site permit for a LWEC under Chapter 216F is not an administrative action. In response Mr. Schleck states,

While it is true that Minn. Stat. 216F.02 provides that the definitions found in Minn. Stat 216E.01 apply to Minn. Stat. 216F, no further guidance on the interaction of 216E and 216F was given by legislature or any other administrative agency. Clearly siting of coal fired, nuclear or hydroelectric power plant involve very different issues from a LWECs. There are no administrative rules from either the PUC or this body that specifically clarify that 216E.01 applies to LWECs.

From the PUC list of documents submitted for the Goodhue Wind Project, the Board counts two documents from CSS in the certificate of need docket and eleven documents in the site permit docket.

Board Analysis

In determining the validity of the complaint the Board must determine the answers to two primary questions. First, were the activities of Ms. Overland on behalf of GWT and Mr. Schleck on behalf of CSS attempts to influence the administrative actions of the PUC? Second, if the first question is answered in the affirmative, was the compensation paid to Ms. Overland and Mr. Schleck sufficient to require registration as a lobbyist? After determining whether the activities on behalf of GWT and CSS are attempts to influence administrative actions, the Board will be able to address the secondary allegation of the complaint, namely that the individuals behind GWT and CSS spent sufficient personal funds to require their registration as lobbyists.

In determining whether the activities of Ms. Overland and Mr. Schleck were attempts to influence administrative action the Board will consider the Goodhue Wind Project siting docket and certificate of need docket separately.

Certificate of Need Docket 09-1186

Neither Ms. Overland nor Mr. Schleck disputes the PUC’s determination that the Goodhue Wind Project required a certificate of need under Minnesota Statutes section 216B.243, in order to proceed. The PUC reached this conclusion because the Goodhue Wind Project meets the definition of a “large energy facility.” A large energy facility is defined in Minnesota Statutes

section 216B.2421 as any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more.

Neither Ms. Overland nor Mr. Schleck disputes the allegation that PUC actions regarding the granting of a certificate of need under section 216B.243 are “administrative action.” Therefore, any effort by Ms. Overland on behalf of GWT or by Mr. Schleck on behalf of CSS to influence the PUC decisions on the certificate of need docket constitutes an effort to influence administrative action.

Ms. Overland concedes that her efforts to influence the actions of the PUC on the certificate of need docket constituted lobbying under Chapter 10A. Mr. Schleck maintains that, despite the filing of a Petition for Intervention for the certificate of need docket, CSS “did not significantly participate in the Certificate of Need docket.”

Mr. Schleck’s attempt to exclude CSS actions on the certificate of need docket from the determination of whether he is required to register is unpersuasive. The statutes and administrative rules on lobbying exclude persons from the requirement to register as a lobbyist if the compensation received or the personal funds spent to influence administrative action is below certain thresholds. State law provides no exception based on the effectiveness of an action, the significance of an action, or the abandonment of an action. Mr. Schleck’s filings on behalf of CSS relative to the certificate of need docket for the Goodhue Wind Project were attempts to influence administrative action under Chapter 10A.

Site Permit Docket 08-1233

The responses of Ms. Overland and Mr. Schleck differ sharply on the question of whether PUC actions on the Goodhue Wind Project site permit docket are administrative actions under Chapter 10A. Ms. Overland’s response acknowledges that the PUC consideration of the site permit docket for the Goodhue Wind Project is an administrative action and therefore that attempts to influence the PUC actions on the docket constitute lobbying.

In both of his responses, Mr. Schleck contends that the definition of administrative action includes power plant and power line siting by the PUC but does not include the siting permit of a LWECS. In explaining this conclusion, Mr. Schleck relies on the fact that the site permit for a LWECS is provided for in Chapter 216F, while site permits for large energy facilities not powered by wind energy are provided for in Chapter 216E. Mr. Schleck also states that the phrase “power plant,” which is used in the definition of administrative action, is not found in Chapter 216F. Mr. Schleck contends this is evidence that the siting of an LWECS by the PUC is not an administrative action under Chapter 10A. Mr. Schleck further contends that the issues related to siting a power plant fueled by other types of energy are different than the issues related to the siting of a LWECS.

The Board considered Mr. Schleck’s position from both a statutory and a policy perspective. Mr. Schleck urges the Board to conclude that an LWECS is not a “power plant” because its siting is governed by Chapter 216F rather than Chapter 216E. The citation for Chapter 216E, contained in section 216E.001, provides that the Chapter shall be referred to as the Minnesota Power Plant Siting Act. Apparently on that basis, Mr. Schleck argues that only site permits under Chapter 216E constitute administrative actions under §10A.01, subdivision 2.

However, the requirements in Chapter 216F are not exclusive of the requirements in Chapter 216E. In Minnesota Statutes section 216F.02, the PUC is provided with a list of Chapter 216E

provisions that must be applied to a site permit for a LWECS. Among the list of provisions are all of the definitions in section 216E.01, which include the following:

Subd. 5: "Large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subd. 9: "Site" means the location of a large electric power generating plant.

As reviewed earlier in this document, a certificate of need was required for the Goodhue Wind Project because, if developed, it will constitute a "large energy facility," which is defined as "any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more..." Although this characterization of the project by the PUC was made in the context of the certificate of need application, the definition is substantially the same as that incorporated into Chapter 216F, under which an LWECS siting permit is sought.

The Board also finds it significant that when the legislature adopted Minnesota Statutes section 10A.01, subdivision 2, it included three PUC actions that could trigger lobbyist registration and reporting requirements: (1) rate setting, (2) power plant and power line siting, and (3) granting of certificates of need under section 216B.243. The legislature deliberately limited the certificate of need proceedings considered as administrative action to those brought under a specific statute. The legislature did not apply any statutory limit to the type of site permit applications which are to be considered administrative action. The Board finds no statutory basis on which to further limit the broad language of section 10A.02, subdivision 2, as it relates to power plant siting.

On a purely policy basis, it would seem just as important for the public to be informed about a LWECS as about a power generating facility driven by some other form of energy. While more traditional energy facilities give rise to different technical issues than a LWECS, the record of the Goodhue Wind Project dockets shows intense public participation and concern, which is common to the development of any large energy facility. The Board believes that the overriding purpose of the lobbying provisions of Chapter 10A is to provide public insight into the people and organizations that attempt to influence specified governmental actions and into the money spent on those attempts. The Board concludes that there is no policy basis to exclude a site permit for a LWECS from the definition of administrative action.

Based on this analysis, the Board concludes that the LWECS site permit docket 08-1223 is a power plant siting procedure for the purposes of Chapter 10A and that participation in that docket triggers lobbyist registration and reporting requirements if compensation or personal expenditure thresholds are met.

Compensation Received

In her response, Ms. Overland acknowledges receiving over \$3,000 in compensation for her lobbying on behalf of GWT in 2011. At that point in time, Ms. Overland should have registered as a lobbyist for GWT and submitted lobbyist disbursement reports. As an association that employed a lobbyist, GWT is now a "principal" under Chapter 10A and will be required to file an annual report for calendar year 2011 with a continuing reporting obligation for each year that the association employs a lobbyist. The Board notes that it agrees with Ms. Overland's statement that hearings conducted by the PUC on the health and safety effects of wind turbines are not administrative actions, and GWT costs related to those hearings should not be included in the reporting of lobbying disbursements.

Mr. Schleck did not respond to Board questions on the compensation paid for lobbying based on his belief that his actions on behalf of CSS did not constitute lobbying. The Board now directs Mr. Schleck to determine if CSS paid him more than \$3,000 in any year for his representation on either the site or certificate of need docket for the Goodhue Wind Project. Based on the PUC records and the evidence obtained in this investigation, there is probable cause to believe that Mr. Schleck received more than \$3,000 for his representation of CSS on the site and certificate of need docket. If Mr. Schleck disagrees with this finding, he may submit a request for reconsideration of the matter supported by appropriate and detailed evidence. Finding that Mr. Schleck did receive more than \$3,000 in compensation for his services, CSS is a principal under Chapter 10A.

The Board notes that the lobbyist disbursement reports that will be filed by Ms. Overland and Mr. Schleck must name any individual or association that provided over \$500 for the purpose of lobbying. From Ms. Overland's response, the Board expects that CSS and Marie and Bruce McNamara will be listed as sources of funding for GWT.

The penalty for failure to file as a lobbyist within the five day time frame for timely registration is contingent on the Board notifying an individual of the need to register, and then the individual ignoring the notification. Therefore, there are no statutory penalties for the tardiness of the retroactive registrations that will be required of Ms. Overland and Mr. Schleck.

Individual Members of GWT and CSS - Requirement to Register as a Lobbyist

Having determined that the efforts of CSS and GWT to influence the PUC actions on the Goodhue Wind Project site and certificate of need docket are lobbying, the Board now turns to the allegation that the individuals who make up GWT and CSS may also be required to register as lobbyists.

An individual who spends more than \$250 of their personal funds in a calendar year on lobbying, not including the individual's travel expenses to lobby or any membership fee to belong to an association that lobbies, is required to register as a lobbyist. In the case of this complaint, the question is whether Steve Groth, as the founder of CSS, or Marie and Bruce McNamara, as the founders of GWT, exceeded the \$250 limit.

The complaint provided copies of pages from the CSS and GWT websites as proof that the \$250 limit was exceeded. In her response, Ms. Overland stated that websites are not lobbying, and therefore questions on the website were not relevant. The complainants' allegation concerning the website and Ms. Overland's response are both inaccurate. The existence of a website that provides strong views on an issue is not a lobbying activity, but the cost of a website that urges others to communicate with public or local officials in an attempt to influence administrative action is an expenditure that would count towards the \$250 threshold for lobbyist registration.

The Board's examination of the CSS website did not locate any pages that contained a direct appeal to contact public or local officials. Website content may of course change, but the Board has no evidence that the CSS website urges others to communicate with public or local officials.

The Board's examination of the GWT website found four pages, including the home page, that urge others to communicate with public officials to influence action on the Goodhue Wind Project. The cost of the GWT website is therefore a lobbying expenditure that counts towards the \$250 threshold for registration.

The Board is aware that the cost of designing and hosting a website has declined over time and does not conclude that the website necessarily requires Marie and Bruce McNamara to register as lobbyists. The Board directs Marie and Bruce McNamara to determine their personal expenditures to design and host the GWT website. If the cost of the GWT website and the cost of any newspaper advertisement, purchased highway sign, or other lobbying expenditure (not including compensation paid to Ms. Overland) exceeds \$250 for a calendar year, Marie and Bruce McNamara are required to register and report as lobbyists.

Based on the above Analysis of the Facts and the Relevant Statutes and the submissions of the Parties, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that Carol Overland was attempting to influence administrative action on behalf of Goodhue Wind Truth when communicating with the Minnesota Public Utilities Commission on the site and certificate of need dockets for the Goodhue Wind Project. There is probable cause to believe that in 2011 Carol Overland received over \$3,000 in compensation for these activities, but did not register as a lobbyist. Therefore, there is probable cause to believe that Carol Overland violated the lobbyist registration provisions of Minnesota Statutes section 10A.03.
2. There is probable cause to believe that Daniel Schleck was attempting to influence administrative action on behalf of the Coalition for Sensible Siting when communicating with the Minnesota Public Utilities Commission on the site and certificate of need dockets for the Goodhue Wind Project. There is probable cause to believe that Daniel Schleck received over \$3,000 in compensation for these lobbying activities but did not register as a lobbyist. Therefore, there is probable cause to believe that Daniel Schleck violated the lobbyist registration provisions of Minnesota Statutes section 10A.03.
3. There is probable cause to believe that Goodhue Wind Truth is a principal as defined in Minnesota Statutes section 10A.01, subdivision 33. Therefore, there is probable cause to believe that Goodhue Wind Truth violated the reporting requirements of Minnesota Statutes section 10A.04, subdivision 6.
4. There is probable cause to believe that the Coalition of Sensible Siting is a principal as defined in Minnesota Statutes section 10A.01, subdivision 33. Therefore, there is probable cause to believe that the Coalition of Sensible Siting violated the reporting requirements of Minnesota Statutes section 10A.04, subdivision 6.

Based on the above Findings, the Board issues the following:

Order

1. Carol Overland is ordered to register as a lobbyist for Goodhue Wind Truth. The effective date of the registration will be retroactive to 2011. The lobbyist registration must be submitted to the Board within five days of receipt of these findings.
2. Carol Overland must submit lobbyist disbursement reports for 2011 and continue submitting reports until the termination of her registration as a lobbyist for Goodhue Wind

Relevant Statutes

Minnesota Statutes, 10A.01, Subd. 2. Administrative action. "Administrative action" means an action by any official, board, commission or agency of the executive branch to adopt, amend, or repeal a rule under Chapter 14. "Administrative action" does not include the application or administration of an adopted rule, except in cases of rate setting, power plant and powerline siting, and granting of certificates of need under section 216B.243.

Minnesota Statutes, 10A.01, Subd. 21. Lobbyist. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

(b) "Lobbyist" does not include:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of metropolitan governmental units;

(5) a party or the party's representative appearing in a proceeding before a state board, commission, or agency of the executive branch unless the board, commission, or agency is taking administrative action;

(6) an individual while engaged in selling goods or services to be paid for by public funds;

(7) a news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments, or paid advertisements which directly or indirectly urge official action;

(8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony; or

(9) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

(c) An individual who volunteers personal time to work without pay or other consideration on a lobbying campaign, and who does not spend more than the limit in paragraph (a), clause (2), need not register as a lobbyist.

(d) An individual who provides administrative support to a lobbyist and whose salary and administrative expenses attributable to lobbying activities are reported as lobbying expenses by the lobbyist, but who does not communicate or urge others to communicate with public or local officials, need not register as a lobbyist.

Minnesota Statutes, 10A.01, Subd. 33. Principal. "Principal" means an individual or association that:

(1) spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

Minnesota Statutes, 10A.03 Lobbyist Registration

Subdivision 1. **First registration.** A lobbyist must file a registration form with the board within five days after becoming a lobbyist or being engaged by a new individual, association, political subdivision, or public higher education system.

Subd. 2. **Form.** The board must prescribe a registration form, which must include:

(1) the name, address, and e-mail address of the lobbyist;

(2) the principal place of business of the lobbyist;

(3) the name and address of each individual, association, political subdivision, or public higher education system, if any, by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears;

(4) the Web site address of each association, political subdivision, or public higher education system identified under clause (3), if the entity maintains a Web site; and

(5) a general description of the subject or subjects on which the lobbyist expects to lobby.

If the lobbyist lobbies on behalf of an association, the registration form must include the name and address of the officers and directors of the association.

Subd. 3. **Failure to file.** The board must send a notice by certified mail to any lobbyist who fails to file a registration form within five days after becoming a lobbyist. If a lobbyist fails to file a form within ten business days after the notice was sent, the board may impose a late filing fee of \$5

per day, not to exceed \$100, starting on the 11th day after the notice was sent. The board must send an additional notice by certified mail to a lobbyist who fails to file a form within 14 days after the first notice was sent by the board that the lobbyist may be subject to a civil penalty for failure to file the form. A lobbyist who fails to file a form within seven days after the second notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.

Subd 4. **Publication.** The restrictions of section 10.60 notwithstanding, the board may publish the information required in subdivision 2 on its Web site.

Subd 5. **Exemptions.** For good cause shown, the board must grant exemptions to the requirement that e-mail addresses be provided.