

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

**Findings and Order in the Matter of the Complaint
by Kristi Rosenquist regarding Chuck Burdick and National Wind, LLC**

Evidence Used in These Findings

On April 4, 2011, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Kristi Rosenquist regarding Chuck Burdick and National Wind, LLC. Ms. Rosenquist alleged that Mr. Burdick had lobbied on issues related to a wind energy project known as the Goodhue Wind Project. Ms. Rosenquist states that because Mr. Burdick is not registered as a lobbyist with the Board he is in violation of Minnesota Statutes, section 10A.03, which requires an individual to register as a lobbyist within five days of being employed by an association for lobbying activities.

In support of this allegation Ms. Rosenquist states that Mr. Burdick met with members of the state legislature as the lead of the AWA Goodhue project advisory board. Ms. Rosenquist also states that Mr. Burdick communicated with stakeholders in the project and urged them to contact state legislators and members of the Minnesota Public Utilities Commission to influence the public officials' actions.

Ms. Rosenquist includes National Wind, LLC on her complaint because Mr. Burdick is employed by National Wind LLC. An association that is represented by a registered lobbyist is a "principal" under Minnesota Statutes, section 10A.01, subdivision 33. A lobbyist principal is required to file an annual report disclosing the association's total lobbying expenditures during the prior year. There are no annual Report of Lobbyist Principal on file with the Board from National Wind, LLC.

The board notified Mr. Burdick of the complaint on April 7, 2011. Mr. Burdick was asked specific questions on his duties for National Wind, LLC and AWA Goodhue, and given an opportunity to provide his response to the complaint.

Mr. Burdick provided his initial response to the Board on April 14, 2011. The Board asked follow up questions and requested additional information from Mr. Burdick on April 26, 2011. Mr. Burdick provided a supplemental response on May 6, 2011.

In response to a question on the relationship between National Wind, LLC and the Goodhue Wind Project and his work on the project, Mr. Burdick states, "I am employed by National Wind, LLC and my title is Senior Wind Energy Developer. ...I work on several wind energy projects, one of which is the Goodhue Wind Project. AWA Goodhue, LLC is a special purpose entity that represents the ownership of the Goodhue Wind Project. AWA Goodhue, LLC has a contract for development services with National Wind, LLC and my efforts on the project are pursuant to that contract."

In response to questions regarding communications with public officials on behalf of the AWA Goodhue, LLC Mr. Burdick states, "Since the energy industry is often a topic of proposed legislation, I occasionally discuss the impacts of proposed legislation with landowners and investors in the wind projects I manage. On rare occasion, I interact with legislators in private meetings related to such legislation." Mr. Burdick also provided that, "On occasion I send out updates to stakeholders in our projects and notify them of their opportunity to participate in the public process."

The Board asked Mr. Burdick to provide a listing of dates on which he met with public officials regarding wind energy projects or proposed legislation, and a listing of dates on which he communicated with others to encourage those individuals to contact public officials. Mr. Burdick provided a list of meetings with public officials he attended and communications he made during 2009, 2010, and 2011 related to the Goodhue Wind Project. Mr. Burdick included in the list some communications related to the project that he did not view as lobbying. The list includes a breakdown of the amount of time Mr. Burdick spent in each meeting, in preparation for meetings, and in communicating with others to encourage the contacting of a public official. With the list Mr. Burdick provided copies of six e-mails he sent to other individuals to encourage contact with public officials regarding the Goodhue Wind Project.

The Board evaluated the types of communication listed by Mr. Burdick and determined that the yearly time spent lobbying by Mr. Burdick was as follows:

Year	Hours of Lobbying Communication
2009	3
2010	22.95
2011	16

Mr. Burdick’s own calculation of total time spent lobbying was lower than the numbers in the above table. Mr. Burdick did not include time testifying at hearings conducted by the Minnesota Public Utilities Commission (PUC), or conducted on behalf of the PUC by the Office of Administrative Hearings (OAH), as lobbying. As will be explained in the analysis section of these Findings, the Board disagrees, and counts that time as a lobbying activity.

With his response Mr. Burdick provided information on his yearly salary from National Wind, LLC. Board staff reduced Mr. Burdick’s yearly salary to an hourly rate of compensation, and then applied that rate to the hours spent on lobbying listed in the table above. From the calculation staff determined that the compensation Mr. Burdick received for lobbying activities did not exceed \$3,000 in any year.

Three lobbyists (Melissa Rahn, Ward Einess, and Kevin Goodno) registered on behalf of AWA Goodhue, LLC in March of 2011, before Ms. Rosenquist filed her complaint. The registrations were for lobbyist representation in 2011. Prior to their registration AWA Goodhue had not been identified to the Board as a lobbyist principal.

On April 22, 2011, the Board received correspondence from Todd J. Guerrero regarding AWA Goodhue, LLC. In his letter Mr. Guerrero states, “We represent AWA Goodhue, LLC in connection with its application for a site permit and certificate of need from the Minnesota Public Utilities Commission relating to a wind farm in Goodhue County, Minnesota. The applications were filed in October 2009 and the proceedings are ongoing. It recently came to our attention that the enclosed...lobbyist registration and reports and principal reports should have been filed with your office in connection with these administrative activities.”

Retroactive lobbyist registrations on behalf of AWA Goodhue, LLC for Mr. Guerrero, Christina K. Brusven, and Alan R. Mitchell were filed with the Board. Mr. Guerrero is identified as the reporting lobbyist for the association. Lobbyist Disbursement Reports for the periods June 1 through December 31, 2009, January 1 through May 31, 2010, and June 1 through December 31, 2010, were also submitted. In response to a Board staff question on the reported costs of producing a certificate of need for the Goodhue Wind Project an amended Lobbyist Disbursement Report for 2009 was filed on May 6, 2011.

Mr. Guerrero also provided lobbyist principal reports for AWA Goodhue, LLC for 2009 and 2010. The 2009 Lobbyist Principal Report disclosed total lobbying expenditures of \$20,000; the 2010 Lobbyist Principal Report disclosed total lobbying expenditures of \$380,000. (Note: on the Lobbyist Principal Report the association's total lobbying expenditures are rounded to the nearest \$20,000.)

Board Analysis

Mr. Chuck Burdick

The complaint correctly identified that Mr. Burdick was participating in the types of communication that constitute lobbying on behalf of the Goodhue Wind Project. Mr. Burdick acknowledged and identified time spent in direct communication with public officials to influence legislative or administrative action, and time spent urging others to communicate with public officials on the Goodhue Wind Project.

Mr. Burdick identified four dates on which he spoke in favor of the Goodhue Wind Project at PUC public meetings, or at public hearings held by the OAH on behalf of the PUC. The total time listed for these communications was twenty one hours. Mr. Burdick did not classify any of that time as lobbying. The Board disagrees. Lobbying includes not only legislative action but also attempts to influence "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.

The PUC administers the certificate of need procedure provided in section 216B.243. The public hearings held directly by the PUC and through the OAH all relate to the granting of a certificate of need to AWA Goodhue, LLC for the Goodhue Wind Project. Therefore, Mr. Burdick's participation at those events was lobbying for an administrative action, and has been counted by the Board as such.

Mr. Burdick also identified six hours on March 15, 2011 during which he provided "expert testimony" at an OAH hearing on the Goodhue Wind Project. The time spent by a paid expert witness who is requested to testify by the body before which the witness is appearing is excluded from the definition of lobbyist (Minnesota Statutes, section 10A.01, subdivision 21 (b) (8)). Mr. Burdick classifies his appearance as expert testimony because the Administrative Law Judge conducting the hearing ordered AWA Goodhue, LLC to provide testimony on aspects of the Goodhue Wind Project. Mr. Burdick provided the testimony on behalf of the association. However, Mr. Burdick was paid by AWA Goodhue, LLC, not the OAH, to provide the testimony.

Whether payment for testimony may be provided by the applicant in an administrative action and still be classified as "expert testimony" is a question that the Board will not reach in these Findings. The six hours spent by Mr. Burdick testifying on March 15, 2011, whether classified as lobbying or expert testimony, do not raise the compensation paid to Mr. Burdick for lobbying above \$3,000 for 2011. Mr. Burdick should be aware that if he conducts additional lobbying activity during 2011 that the Board reserves the right to include the compensation for the six hours in determining his total lobbying compensation for the year.

The lobbyist registration requirement in Chapter 10A is not triggered by participating in lobbying activities alone. Instead, the statute provides specific monetary thresholds for compensation and expenditures paid for lobbying activities. Minnesota Statutes, section 10A.01, subdivision 21, provides in part that a “lobbyist” means an individual who is:

(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.

Mr. Burdick is compensated for lobbying on behalf of AWA Goodhue, LLC, but his salary is also compensation for other duties in support of the Goodhue Wind Project that are not lobbying. Minnesota Rules 4511.0600, subpart 4, provides that, “A disbursement that is partially in support of lobbying and partially for a nonlobbying purpose must be allocated on a reasonable basis between the two purposes and reported based on that allocation.” The reduction of a yearly salary to an hourly rate and then applying that rate to time spent lobbying is one way to determine a reasonable allocation of the salary paid to Mr. Burdick for lobbying compensation. As stated in the evidence section of these Findings the allocation of Mr. Burdick’s yearly salary as compensation of lobbying activities does not exceed the \$3,000 threshold that requires registration with the Board.

While Mr. Burdick is not required to register as a lobbyist the compensation he received for lobbying activities are reportable lobbying disbursements on behalf of AWA Goodhue, LLC. In the case of an administrative action before the PUC the cost of preparation of the certificate of need is included in the reportable lobbying disbursements. The disbursements should be reported by the designated lobbyist for AWA Goodhue, LLC on the periodic Lobbyist Disbursement Reports, and included in the amount reported by AWA Goodhue, LLC on the annual Lobbyist Principal Report.

National Wind, LLC

The complaint was filed against National Wind, LLC on the belief that Mr. Burdick was a lobbyist and that the association he represented was National Wind, LLC. However, even if Mr. Burdick’s compensation for lobbying had passed the threshold at which registering as a lobbyist is required the association he represents for the purposes of the Goodhue Wind Project is AWA Goodhue, LLC.

National Wind, LLC is contracted to provide services to AWA Goodhue, LLC for the development and approval of the Goodhue Wind Project. Mr. Burdick’s activities are part of those contracted services. Therefore, AWA Goodhue, LLC is the association being represented during lobbying efforts for the Goodhue Wind Project even if the salary paid to Mr. Burdick is from National Wind, LLC.

AWA Goodhue, LLC

As noted in the evidence portion of these Findings lobbyists had registered to represent AWA Goodhue, LLC for 2011 prior to Ms. Rosenquist filing her complaint. The registration of three additional lobbyists retroactive to 2009, and the reporting of lobbying disbursements on behalf of AWA Goodhue, LLC that occurred two years prior, is evidence that the public did not have adequate disclosure of the lobbying effort for the Goodhue Wind Project.

The penalty for failure to file as a lobbyist within the five day time frame is contingent on the Board notifying an individual of the need to register, and then the individual ignoring the notification. The retroactive registration and reporting for AWA Goodhue, LLC was done without Board notification. Therefore, there are no statutory penalties for the tardiness of the retroactive registrations.

Based on the above Summary of the Facts and the Relevant Statutes, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that Chuck Burdick was lobbying on behalf of AWA Goodhue, LLC when he communicated with public officials on the Goodhue Wind Project, urged others to communicate with public officials on actions related to the Goodhue Wind Project, and appeared to testify before an administrative law judge holding a contested case hearing on the Goodhue Wind Project. There is no probable cause to believe that Chuck Burdick received compensation of over \$3,000 in any year for these activities. Therefore, there is no probable cause to believe that Chuck Burdick was required to register as a lobbyist for AWA Goodhue, LLC under the provisions of Minnesota Statutes, section 10A.03.
2. There is no probable cause to believe that National Wind, LLC is a lobbyist principal as defined in Minnesota Statutes, section 10A.01, subdivision 33.
3. There is probable cause to believe that AWA Goodhue, LLC was represented by lobbyists as of October 2009. There is probable cause to believe that the lobbyists failed to register on behalf of AWA Goodhue, LLC within the timeframe required by Minnesota Statutes, section 10A.03, subdivision 1. There is probable cause to believe that the required lobbyist registrations, lobbyist disbursement reports, and lobbyist principal reports, have now been filed with the Board.

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

Order

1. The record in this matter and all correspondence is hereby entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11. This matter is closed.

Dated: May 31, 2011

_____/s/ John Scanlon

John Scanlon, Chair
Campaign Finance and Public Disclosure Board

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.