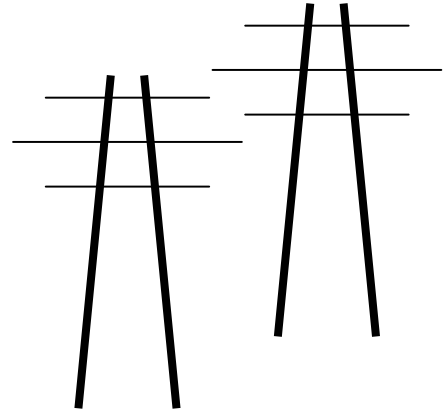


Legalelectric, Inc.

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July 13, 2017

Dan Wolf
Executive Secretary
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

RE: Reply Comments re: Freeborn Wind, LLC
MPCU Docket: IP-6946/WS-17-410

Dear Mr. Wolf:

On behalf of Association of Freeborn County Landowners, enclosed please find Reply Comments.

Please let me know if you have any questions or require anything further.

Very truly yours,

Carol A. Overland
Attorney at Law

Enclosure

cc: Association of Freeborn County Landowners

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Nancy Lange
Dan Lipschultz
Matt Schuerger
Katie Sieben
John A. Tuma**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

In the Matter of the Application of Freeborn Wind Farm, LLC for a Large Wind Energy Conversion System Site Permit for the 84 MW Freeborn Wind Farm in Freeborn County.

PUC Docket No. IP-6946/WS-17-410

REPLY COMMENTS ON COMPLETENESS OF APPLICATION

The Association of Freeborn County Landowners filed comments on the completeness of the Freeborn Wind Farm application, raised issues of material fact, and requested a Contested Case. The Association of Freeborn County Landowners hereby submit these Reply Comments based upon the Comments of others.

Department of Commerce – EERA

Commerce raises several issues that the Commission should note.

I. Lack of Notice, Due Process, and Fundamental Fairness

The most important comment of the Department of Commerce is regarding the timing of the Commission's request for comments on material facts and referral for contested case proceedings:

Referral for Contest Case Proceedings

EERA staff recommends that the Commission delay the decision on whether to refer the project to the OAH for a contested case hearing until the draft Site Permit stage.

Development of the draft Site Permit will provide insight into the potential Project impacts, and clarity as to the appropriate Site Permit conditions to be included. Depending on the outcome of that process, the Commission can determine whether a contested case hearing will aid in making their final determination on the Site Permit Application.

The Department's Comment is appropriate given the Commission rules regarding timing of a Contested Case determination and the Commission's request for comments on a contested case and referral to OAH at this time. Under the wind siting rules, requests for a Contested Case are to occur within the Comment Period on the Draft Permit.

Minn. R. 7854.0900, Subp. 5. Contested case hearing.

A. Any person may request in writing that a contested case hearing be held on an application for a site permit for a proposed LWECS project. The contested case hearing request must be filed within the time period established for submitting comments on the draft site permit. The person requesting the public hearing shall include, as part of the request, the issues to be addressed in the hearing and the reasons a hearing is required to resolve those issues.

Minn. R. 7854.0900, Subp. 5. The Commission's decision is to occur after review and consideration of requests, which are timely filed **AFTER** the Draft Permit is issued and is up for comment. After review, the Commission **SHALL** order a contested case based on comments, if:

B. The commission shall order a contested case hearing if the commission finds that the person requesting the contested case hearing has raised a material issue of fact and that holding a hearing would aid the PUC in making a final determination on the permit application.

Id. As Commerce notes, the timing of the Commission's request for comments on material issues of fact and the question of whether this matter should be referred to Office of Administrative Hearings for a contested case is premature.

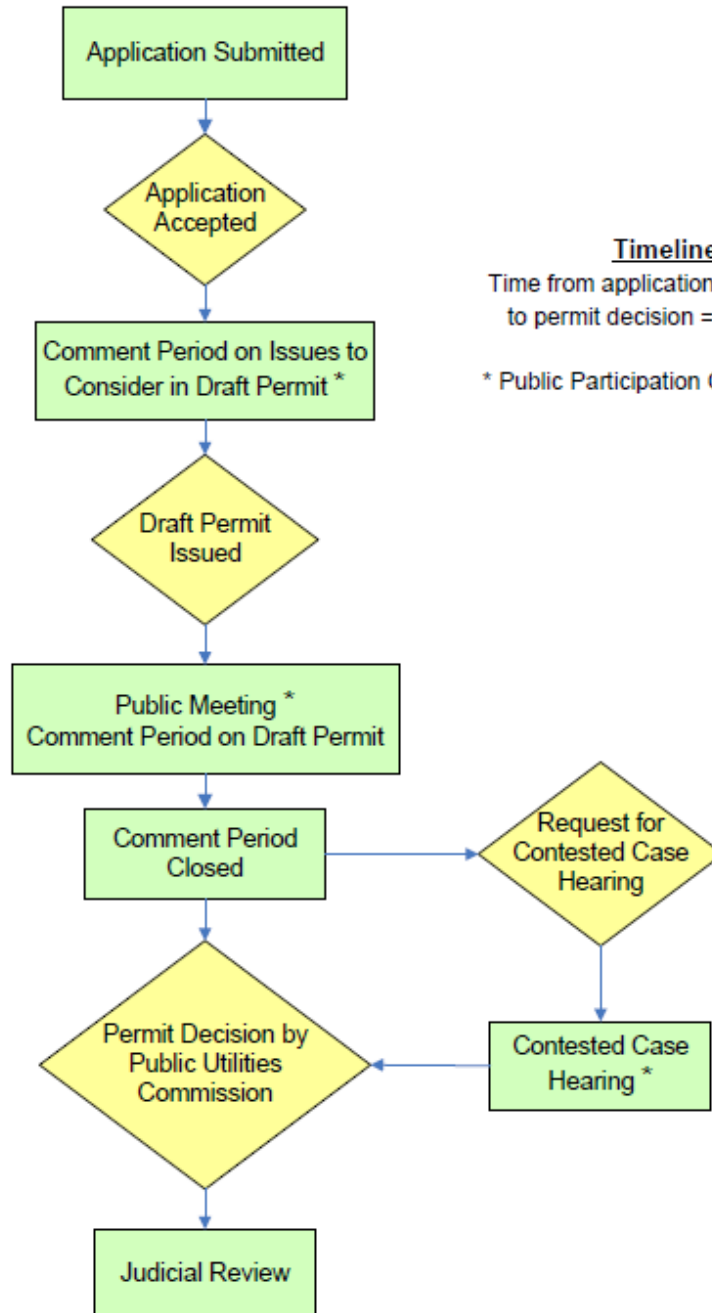
The Commission's process flow chart also notes that Requests for a Contested Case are due further along in the process (but it is also not clear on the flow chart that such comments are

due before the end of the Draft Permit comment period)¹:



Large Energy Wind Conversion Systems Permitting Process

Minnesota Rules 7854



Timeline

Time from application acceptance to permit decision = 180 days.

* Public Participation Opportunities

¹ Online at <https://mn.gov/commerce/energyfacilities/documents/Wind%20Process%20-%20Color%20Flowchart%207854%20DOC.pdf>

Beyond the timing in the rules, why does it matter if this request is premature and if a Commission determination were made at this time? It matters because landowners have received no notice whatsoever, nor has KAAL. In this case, no Certificate of Need is required, due to approval of the project in Xcel Energy's acquisition docket. The CoN process requires a detailed notice plan and notice, thereby affording landowners notice long before the application reaches the Commission. In this case, landowners had no such notice.

Similarly, under the Power Plant Siting Act (PPSA) siting/routing process, notice to landowners is required at a number of points in the process. In this case, not under the PPSA, there has been no notice to landowners.

Under wind siting rules, landowners are not provided notice of a project until after the Application is accepted, which has yet to occur! Minn. R. 7854.0600. At this time, landowners in the project area have received no formal notice that this application has been filed, nor have they received notice of the opportunity to submit comments on completeness and material issues of fact. KAAL, which has been in communication with Freeborn and the Commission also has received no notice. The Service List for this project is only 6 names long – four are state employees and two are applicant representatives. Notice has been insufficient and inadequate.

Were the Commission to make a determination on referral to OAH and a contested case at this early point in the process, it would be made prior to notice to landowners. Were the Commission to make a determination on referral to OAH and a contested case at this early point in the process, landowners would not have an opportunity to offer comments, raise material issues of fact, nor request a contested case. It should not require a rule for the applicant and Commission to be aware that landowners need notice before such important decisions as OAH referral and whether a contested case is necessary. This is a due process and equity issue – is the

Commission paying attention?

II. Applicant hasn't quite addressed Commerce recommendations

Another point raised by Commerce is that the applicants resubmitted their application after Commerce review, only “somewhat following the EERA’s initial review recommendations” and Commerce says that “the updated Application generally addresses the EERA comments and recommendations...” Commerce Comment, p. 4. This faint praise deserves consideration as to whether the applicant should be ordered to better address the “somewhat” followed recommendations.

The Applicant submitted a draft Application for review in mid May 2017. EERA reviewed the document and provided comments and recommendations to the Applicant in late May and early June, prior to the initial eDocket filing. The Applicant has edited and supplemented the Application, somewhat following EERA’s initial review recommendations before making their official filing on June 15, 2017. EERA finds the updated Application generally addresses the EERA comments and recommendations provided to the Applicant prior to their initial filing.

Commerce EERA Comment, p. 4.

The two substantive issues raised which the Commission should address prior to accepting the application:

- General Setback Considerations
- Freeborn County Ordinance Compliance
 - Turbine 31 is not sufficiently setback from a type III wetland
 - Shadow flicker at at least four non-participating landowners is greater than 30 hours annually

A. General Setback Considerations – Section 5.1.1

The specific comments of Commerce were as follows:

Section 5.1.1 General Setback Considerations

Table 5.1-1 identifies Public Conservation Lands having a setback of 3 times the rotor diameter, per Freeborn County Ordinance Sec. 26-51. The footnote for this item also indicates that the Site Permit conditions will consider these areas non-participating lands subject to the Wind Access Buffer. However, it is

not indicated in the table, as it is for other topics that the setback from Public Conservation Lands could be up to 5 times the rotor diameter depending on the location of the lands in relation to the location of the turbine. This omission is likely not a major issue, but rather a point of clarification EERA wanted to bring to the Commission attention.

B. Applicant's compliance with Freeborn County's Wind Ordinance

The Commerce comment raised issues regarding the applicant's compliance with the Freeborn County Wind Ordinance. Commerce EERA Comment, p. 4-5.

Freeborn County Ordinance Compliance

The proposed Project does not appear to meet some of the standards set forth in the Freeborn County Ordinance, which are more stringent than standards identified within the State LWECS Site Permit. Specifically, EERA notes that Turbine 31 is closer than three rotor diameters from what has been identified as a type III wetland, which does not meet the Freeborn County Ordinance of a three rotor diameter turbine setback from type III, IV, and V wetlands.

Additionally, the Freeborn County Ordinance indicates that shadow flicker at nonparticipating homes should not exceed 30 hours per year. The Site Permit Application, Appendix C has identified four non-participating homes that are expected to receive more than 30 hours of shadow flicker per year under real case scenarios.

EERA believes the Applicant will be seeking variances or exceptions from the County Ordinance for both the turbine/wetland setback and the shadow flicker occurrence. EERA staff will continue to evaluate these issues during the Site Permit Application review process, and also coordinate with the Applicant and Freeborn County staff to ensure these issue are appropriately addressed and resolved prior to development of the preliminary Draft Site Permit.

Commerce EERA Comment, p. 4-5.

The Association of Freeborn County Landowners stated in its Initial Comment that it was doubtful that the project could meet its self-adopted and oft-stated requirement of 30 hours/year of shadow flicker, and it was also doubtful that the project had land sufficient to meet the setback requirements (Wayne Fett commented that one turbine is just 705 feet from a residence.²).

² See Comment of Wayne Fett, online at [20177-133464-01](#).

EERA states in its comment that Freeborn Wind will be seeking variances or exceptions from the County Ordinance for both the turbine/wetland setback and the shadow flicker occurrence. Id.

The job of Freeborn County is to protect the public health and safety of its citizens. Toward that end, the County Board met on Tuesday, July 11, 2017:

The Board adopted a resolution to write a letter expressing a preference for a 1,500 foot setback to be applied in the Minnesota portion of the Freeborn Wind Farm consistent with the setback being voluntarily applied by Invenergy, LLC in the Iowa portion of the project.

Comment, Freeborn County, eFiled 7/13/2017.³

Applications have routinely presumed 1,500 foot setbacks for wind projects, and the Commission has routinely considered and ordered 1,500 setbacks for projects. For this particular project, 1,500 foot setbacks are utilized by applicants for the Iowa portion of this project. See also Comment of Dorene Hansen, email from Worth County confirming developer commitment to 1,500 foot setback.⁴ 1,500 setbacks are not new, and are particularly desirable in an area with residences within the project footprint. The Freeborn Wind Project should be consistent in setbacks on both sides of the border.

Comments of Dorene Hansen

In a number of comments, Dorene Hansen raises issues that should be considered by the Commission.

I. Eagle nests are present in the footprint that are not shown by applicants.

Dorene Hansen stated in her Initial Comment (20177-133470-01) that there were at least three eagle nests not disclosed in the application. The applicants reported that there are two eagle nests in one isolated corner of the project footprint, but in fact there are an additional three

³ Online (filed as "Public Comment") at [20177-133824-01](#).

⁴ Online at [20177-133792-02](#).

in the footprint and within the 10 mile radius of area of concern. The addresses provided by Dorenne Hansen, and the coordinates for these eagle nests, are:

1. North of 110th St 1/2 mile and west of 840th Ave, Glenville MN
43.529685 N 93.529685W
2. 140th St and 1/2 miles west of 830th Ave, Glenville MN
43.557454 N 93.219347 W
3. 52717 173rd St, Austin MN-outside footprint, within 10 mile, maybe close to 6
43.605187 N 92.986884 W

The application is incomplete, and should not go forward until these known eagle nests are added to the application and maps, until DNR and USFWS are notified and have confirmed the locations, and until the ABPP has been updated after study to determine foraging range from these nests.

II. The Avian and Bat Protection Plan must take bat migration season into account.

Dorenne Hansen has Commented on two issues regarding bat migration that must be addressed before the application can be deemed complete. First, upon information and belief, Peter Fasbender of USFWS has stated that all wind projects must curtail operations during bat migration season, from mid-August to mid-October, two months. If this is correct, it should be stated in the application, and the cost of such curtailment should be disclosed and considered.

Another issue regarding bats is that Freeborn's Draft ABPP is not credible on two counts -- it reports that overall bat activity decreased from early September to late October, and that activity decreased substantially near the end of the study in November. If this is correct, it directly contradicts USFWS's information regarding bat migration.

Both of these bat related issues make the application incomplete, and both are material issues of fact that should be addressed.

Comments of David Harbert, GM, VP of KAAL

The Initial Comments of KAAL show that KAAL is very concerned about the presumed, expected, impact of the Freeborn Wind project on its broadcasting. KAAL served a letter on the Commission, which was eFiled and eServed by the Commission on July 10, 2017, 4 days after the Initial Comment deadline (labeled as “Public Comment,” and not KAAL). This KAAL Initial Comment letter is not its first to the Commission, and it details the steps the station has taken in attempting to protect its interest and avoid the expected adverse impacts of this project on KAAL and five other stations. For the purposes of this Reply Comment, it’s regarded as an Initial Comment. The Comments of others, including Nancy Hajek, Clark Ericksen, Allie Olson, Gregory D. Jensen, also raise issues, as receivers, about the potential of the project to interfere with radio, cellular, and microwave communications systems.⁵

The fact that the project is expected to adversely affect these stations is apparently not contested, per the KAAL Comment. The Freeborn Wind Project application is incomplete. Prevention of these substantial impacts is not mentioned at all. The presumed impacts on broadcast communications must be identified in the application, including whether these impacts can be prevented, and for those not prevented, whether impacts can be remediated. The application must also address the cost of prevention and mitigation to Freeborn Wind and to the affected parties. Prevention, remediation, and costs present precisely the sort of material issues that demands a contested case. However, it appears that the applicant and the Commission have not taken KAAL’s issues, and those of the other five stations, seriously.

KAAL’s first letter to the C, filed by the PUC as “Public Comment” gives very specific details of Freeborn Wind’s **expected** radio interference:

⁵ See Comments in Docket 17-410 including [20177-133545-01](#), [20177-133546-01](#), [20177-133547-01](#), [20177-133583-01](#), [20177-133583-02](#), [20177-133583-03](#), [20177-133583-04](#); [20177-133592-01](#);

Both KAAL and Invenergy acknowledge that construction of the Project would cause interference to the broadcast transmissions of KAAL, diminishing service which KAAL provides, including the ability of the public to receive over-the-air broadcasts of KAAL.

KAAL Letter, June 13, 2017.⁶ Further, it is not only KAAL that “will certainly be adversely affected” by this project:

The six television stations identified by Comsearch as being adversely affected by the Project are: KAAL(TV), an ABC affiliate; KYIN(TV), a PBS affiliate; KIMT(TV), independent, KSMQ-TV, a PBS affiliate; KXLT-TV, a Fox affiliate; and KTTC(TV), an NBC affiliate.

Id., KAAL Letter, June 13, 2017, fn. p. 2. This goes beyond potential impacts – these six stations are expected to be adversely affected with substantial interference.

Despite known adverse impacts, and despite engaging in discussions and negotiations with KAAL, Freeborn Wind has this to say in its application, filed just two days after KAAL’s letter:

8.5.5.2 Impacts

Construction of wind turbines has the potential to impact TV reception as a result of an obstruction in the line of sight between residents relying on digital antennas for TV reception and the TV station antennas; however, based on the low number of full-power TV channels available in the immediate vicinity of the Project Area, it is unlikely that off-air TV stations are the primary mode of TV service for the local communities. Signal scattering could still impact certain areas currently served by the TV stations, especially those that would have line-of-sight to at least one wind turbine but not to a respective station antenna. TV cable service, where available, and direct broadcast satellite service are more likely the dominant modes of service delivery.

Application, p. 45-46.⁷ This statement is absurd – it disregards the fact of over-the-air broadcast and reception of television signals in the project area, disregards the fact of the “over-the-air viewing audiences certainly would be affected adversely by the project,” and files the application without addressing prevention. KAAL Letter, June 13, 2017. Further, no notice of the filing of the application or solicitation of comments was provided to KAAL. This is poor process.

⁶ “Public Comment,” online at [20176-132967-01](#).

⁷ Application, online at: [20176-132804-01](#).

In the Application section on mitigation, the applicant also fails to address prevention of these certain adverse impacts. The applicant improperly relies on after-the-fact reporting of interference by affected parties. It presumes that the project would be permitted as is, that it would be up and running, and the burden then shifts to those residents or businesses to complain before any effort is made to establish the known cause of interference, which is expected to occur in this case, and then to take steps case-by-case to mitigate:

8.5.5.3 Mitigative Measures

If interference to a residence's or business's TV service is reported, Freeborn Wind will work with affected parties to determine the cause of interference and, when necessary, reestablish TV reception and service. Freeborn Wind plans to address post-construction TV interference concerns on a case-by-case basis. If TV interference is reported to Freeborn Wind, project representatives will:

- Review results of the report to assess whether impacts are likely Project-related;
- Meet with landowner and local communication technician to determine the current status of their TV reception infrastructure;
- Discuss with the landowner the option of 1) installing a combination of high gain antenna and/or a low noise amplifier at Freeborn Wind's sole expense, or 2) entering into an agreement for Freeborn Wind to provide a monetary contribution equal to the cost of comparable satellite TV services at the residence;
- Freeborn Wind will test option 1, and if it restores landowner's TV reception to pre-windfarm-operations performance, will consider the matter closed;
- If Project-related interference remains an issue, Freeborn Wind will propose an agreement that reimburses the landowner for the costs of comparable satellite TV services and will remove the antenna and amplifier equipment, unless it was initially installed to serve multiple households; and
- If Freeborn Wind and the landowner are unable to reach an agreement to resolve interference-related issues, Freeborn Wind will report the concern as an unresolved complaint and defer to the MPUC's dispute resolution process to resolve the matter.

Freeborn Wind recognizes that some impacts to TV service within the Project Area may occur, but these impacts are likely to be minimal based on the findings of the off-air TV analysis. The Applicant is committed to operating the facility in a manner that does not adversely impact TV reception. Should issues arise following construction of the Project, Freeborn Wind will work with the affected residents in a timely manner to determine the cause of the interference and establish acceptable reception.

Application, p. 46.

KAAL's letter of June 13, 2017, was just prior to the filing of the application, and disclosed that KAAL had been negotiating with Freeborn Wind regarding interference and

remediation. A consultant had been hired, but was not provided with specific turbine locations, and without locations of the turbines, it is impossible to address interference. KAAL's letter was to inform the Commission of these issues and request delay in review of the application.

One week later, the Commission responded, saying:

In addition, there is a standard provision in any wind site permit issued by the Commission that requires the permittee to conduct an assessment of any interference by the project with any communication devices. The Interference provision in a permit reads, in part, as follows:

The Permittee shall not operate the project so as to cause microwave, television, radio, telecommunications, or navigation interference in violation of Federal Communications Commission regulations or other law. In the event the project or its operations cause such interference, the Permittee shall take timely measures necessary to correct the problem.

Because of this, Commission staff does not believe that a suspension of the proceedings is warranted at this time and that your concerns can be addressed within the permit application review process. We encourage you and persons potentially affected by the project to participate in the proceeding.

PUC Letter, June 21, 2017.⁸

There was the no acknowledgement of the developer's, the consultant's, and KAAL's presumption of interference. Further, the Commission did not provide any information regarding eFiling, the PUC's administrative process, about "participants" and "party" participation options, the necessity of Intervention to become a party in this docket, and what Intervention entails.

This is not something that would be known to a typical person voicing a concern. Providing this non-legal process background is the job of the Public Advisor, and the Public Advisor's contact information was not provided as a resource.

The KAAL Initial Comment of July 6, 2017, was filed by the Commission, and is a follow-up to communications between the applicants and KAAL going back prior to the application. See "Public Comment" filed by PUC.⁹

KAAL's comments are about substantive matters that the Commission should consider:

⁸ Letter to KAAL, online at [20176-132989-01](#).

⁹ "Public Comment" online at [20177-133655-01](#)

- No notice was provided to KAAL of the application.
- No notice was provided to KAAL of the Comment period.
- KAAL raises substantive completeness issues:
 - Failure to provide turbine locations for technical studies.
 - Failure to provide studies regarding 38 affected microwave stations.
 - Failure to test assumptions and provide detail regarding resolution of anticipated interference.
 - No independent analysis of impact to OTA reception for local residents.

Again, the project’s significant interference is presumed, a fact agreed upon by all parties.

Whether that interference can be prevented, mitigated, and or remediated, and the associated cost, is a completeness issue because it is not addressed in the application, and these matters are material issues of fact, suitable for a contested case. A permit for this project should not be issued until the record has been developed, until these issues have been addressed. No project with expected significant interference should be permitted on a “build first, remediate later” “if possible” “whatever the cost” “if and only after someone complains” basis.

Comments of Wayne Fett – 705 foot setback!

As above, this project should be planned utilizing at a minimum 1,500 foot setback between the turbines and residences. However, in this case, per the Comment of Wayne Fett, turbines are not planned with sufficient setbacks, and at least one does not meet even the inadequate 1,000 foot setback. Wayne Fett, of 12128 – 900th Avenue, Glenville, reported in his Initial Comment that a turbine located near the home at 12787 900th Avenue, Glenville, and marked by a stake in the ground, is just 705 feet from that home.¹⁰

Comments of Kathy Nelson – Shadow Flicker

The Comments of Kathy Nelson raise the completeness and material fact issues of the applicant’s inadequate treatment of shadow flicker in the application and the inappropriate

¹⁰ Comment online at [20177-133464-01](https://www.pse.com/20177-133464-01).

suggestions for mitigation.¹¹ Shadow flicker, like radio interference, is best addressed prior to construction, because if a turbine is causing problems, it's not likely to be moved after construction. The applicant, however, has provided modeling that shows compliance with a 30 hour/year limit on shadow flicker is unlikely, and as with interference, presumes permitting and construction rather than focus on prevention. See Commerce Comments, addressed above.

Kathy Nelson has had email communication regarding shadow flicker concerns, and received this response from the applicants:

With the knowledge of when the flicker is possible, this might be much less of a source of concern. For example, if it is possible in December and you go to Florida for the winter, no problem. Or if it's at a time when you are usually not at home and at work, for example, then it would also not be a problem. Or, if you just knew when to close the blinds. Etc. I'll get you that when it's been checked and done, hopefully next week.

The matter of shadow flicker is serious, and there would be a limitation of inflicting shadow flicker on residents of 30 hours per year, one repeatedly promised by applicants to residents. It is a material issue of fact whether applicant can comply with this standard, and it is clear that the applicants do not take this seriously, suggesting residents go to Florida! Prevention is doubly important when mitigation is not practical and perhaps not possible.

Comments of Stephanie Richter – Property Values

In her Initial Comment, Stephanie Richter raised the material issue of fact as to whether the project would decrease property values. This is highly contested, as project applicants state there would be no impact, and residents state there would be substantial impacts. Property valuation studies and experts are readily available reporting substantial impacts of wind projects on property values. Stephanie Richter collected data from public records regarding valuation of property by the county, which is also a host to the Bent Tree Wind Farm, and found that land outside of the footprint increased in value, and land within the footprint decreased in value.

¹¹ Comments of Kathy Nelson, online at [20177-133467-01](#); [20177-133467-02](#).

Property Values Within Bent Tree Wind Farm and 5 Miles Away (East and West)
Near Manchester & Hartland, Freeborn County, MN.

The figures below are taken from the Beacon-Schneider website. They reflect the actual property values from 2014 to 2017.

Within Wind farm	2014	2015	2016	2017	Value Up/Down?
25725 690 th Ave	\$444,900	413,700	412,100	393,200	Down
26823 690 th Ave	\$399,200	282,300	304,400	302,600	Down
25971 690 th Ave	\$846,500	782,500	761,500	721,000	Down
25886 708 th Ave	\$764,200	699,400	624,800	585,100	Down
26777 708 th Ave	\$289,100	261,700	243,000	226,500	Down
<u>5 Miles Away</u>					
26093 640 th Ave	115,900	124,500	127,200	127,200	Up
26504 640 th Ave	155,700	154,000	158,400	156,500	Up
25895 739 th Ave	113,300	113,000	124,700	142,300	Up
25889 739 th Ave	89,100	87,800	91,500	118,100	Up

Comment, Stephanie Richter.¹²

Other commentors raised this issue as well. Robert Van Pelt provided comments and a report showing that there could be up to 25% decrease in property values.¹³ Sean Gaston found that the survey by Freeborn, included with the application as a Market Impact Analysis,¹⁴ was fatally flawed, with inadequate sample size, and inaccurate reporting.¹⁵ Dorene Hansen also raised these issues in her Comment.¹⁶

Whether the project would have an impact on property values is a contested and material issue of fact.

Health Impacts of Wind Turbines is a Contested and Material Issue of Fact

Many commentors raised issues regarding health impacts of wind turbines. The Commission opened a docket on this issue in 2009 after the Minnesota Department of Health issued its report, entitled “Public Health Impacts of Wind Turbines. There is no question that

¹² Comment, eFiled, available online: [20177-133473-01](#)

¹³ Comment, online at [20177-133481-01](#) ; Report exhibit: [20177-133481-02](#) .

¹⁴ Application, Appendix E, Market Impact Analysis, online at [20176-132804-07](#) .

¹⁵ Comment, available online: [20177-133598-01](#) ; Exhibit, letter from local Real Estate agent: [20177-133598-02](#) .

¹⁶ Comment, online at [20177-133544-01](#) .

these health impacts are hotly contested material issues of fact. See PUC docket¹⁷ and comments¹⁸ of Dorene Hansen; Michelle Severtson; Holly and Chuck Clarke; Marcia and Gary Sola; Sean Gaston; Kristi Rosenquist. These are issues that the Commission has yet to address, despite its opening of the “Commission Investigation” docket. A contested case is required to address these issues.

Further, as noted in the Comment of Kristi Rosenquist, the MPCA’s sound rules, found in Minn. R. Ch. 7030, do not address wind sound. The rules were not promulgated to address infrasound, and only apply to sound in the dBA weighted scale. At least one rulemaking petition has been filed to initiate rulemaking, but it was rejected. It should also be noted that the wind siting rules, under Minn. R. Ch. 7854 also do not address public health impacts, sound levels, or shadow flicker, and should be updated. At least one rulemaking petition has been filed to initiate rulemaking, but it also was rejected. There have been repeated promises that wind siting rules are the next for Commission review after Certificate of Need and PPAS Siting and Routing.

Process Issues

I. eFiling Identification; Service List; Public Advisor

Three Comments have been filed in this docket by the Commission and have been labeled as “Public Comment.” Two of these comments were mailed to the Commission by KAAL and one from Freeborn County. eFiling is good, and identified eFiling is better!

20177-133824-01	PUBLIC	17-410	<input type="checkbox"/>	WS	PUC	PUBLIC COMMENT	07/13/2017
20177-133655-01	PUBLIC	17-410	<input type="checkbox"/>	WS	PUC	PUBLIC COMMENT	07/10/2017
20176-132967-01	PUBLIC	17-410	<input type="checkbox"/>	WS	PUC	PUBLIC COMMENT	06/20/2017

¹⁷ Public Health Impacts of Wind Turbines, online at <https://legalelectric.org/f/2009/06/mndepthhealth-windwhitepaper.pdf>

¹⁸ Comments of Dorene Hansen at [20177-133517-01](#); Michelle Severtson at [20177-133516-01](#); Holly and Chuck Clarke at [20177-133515-01](#); Marcia and Gary Sola at [20177-133514-01](#); Sean Gaston at [20177-133511-03](#), and [20177-133511-01](#); Kristi Rosenquist at [20177-133599-01](#).

When comments are filed without identification, the comments can become lost in the docket.¹⁹

These comments are from arguably the two most affected parties, KAAL, a television station facing certain adverse impacts, and Freeborn County, the county hosting the Freeborn Wind Project. When such important directly affected parties send comments, and the Commission files them, as it should, every effort should be made to assure that the parties comments are filed identifying the sender.

To aid in Notice, all those commenting should be added to both the PUC' Service List and to Commerce's "Project List" so that notice may be easily sent and received.

In addition, this is a situation where the Commission's "Public Advisor" could, and should, contact the sender of Comments, send a "process flow sheet"²⁰ and explain eFiling, including help through the registration for eFiling and the eFiling process and answer questions that may occur to those commenting.

II. PPSA Not Generally Applicable to Wind Turbine Siting

The Comment of Marie McNamara raises an interesting point.²¹ In its application, Freeborn Wind states that exclusion and avoidance criteria of the Power Plant Siting Act were considered and utilized in selecting the Project Area. The specifics of this should be explained, because very little of the PPSA applies to the siting of wind projects. The application is not complete until this information is provided.

¹⁹ This was a serious recurring issue with Commerce's treatment of EIS comments in the CapX 2020 transmission dockets. See, e.g., PUC Dockets TL-08-1474; TL-09-1056; TL-09-1448.

²⁰ The Commission's Process Flow Chart needs updating because is missing some public participation aspects, such as Completeness Initial and Reply Comments, Intervention (it is also unclear on the chart that the Request for a Contested Case hearing must occur BEFORE the end of the Draft Permit comment period), that any person may file Exceptions to ALJ's Report, and that filing a Motion for Reconsideration open to any affected party.

²¹ Comment of McNamara online at [20177-133600-01](#). Marie McNamara, Goodhue Wind Truth, has been participating for the last five years in the rulemaking updates to the PUC's Ch. 7849 and 7850, Certificate of Need and Siting/Routing, respectively, in preparation for the PUC's Ch. 7854 Wind Siting rulemaking.

CONCLUSION

The Association of Freeborn County Landowners asks that the Commission pay particular attention to the Comments of Commerce – EERA, KAAL, and to the comments of the many landowners raised in Initial Comments.

Most importantly, the Association of Freeborn County Landowners requests that the Commission request in its Completeness Order that public comments be open during the Draft Permit comment period, and that Initial and Reply completeness comments that include both material issues of fact and whether this application docket be referred to the Office of Administration Hearings be included as if filed during the comment period on the Draft Permit. Timing of these comments based on the Commission’s June request, and the Commission’s decision regarding referral and a Contested Case determination is covered in the wind siting rules. Timing and notice regarding opportunity for comment is a matter of due process. Landowners have not yet received notice regarding this project, and a decision should not be made regarding a contested case, prior to notice and an opportunity for the public to weigh in.



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