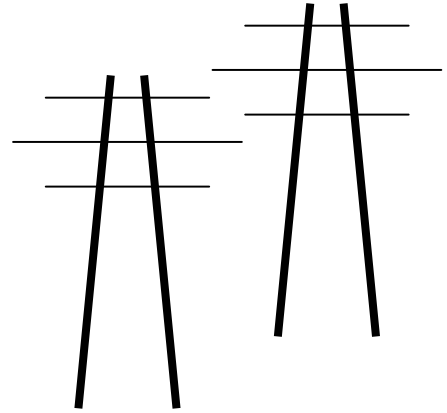


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September 20, 2017

LauraSue Schlatter
Administrative Law Judge
OAH
P.O. Box 64620
St. Paul, MN 55164-0620

via eFiling and eService

RE: Motion & Petition for Task Force - Association of Freeborn County Landowners
OAH Docket: 80-2500-34633
MPCU Docket: IP-6946/WS-17-410

Dear Judge Schlatter:

On behalf of Association of Freeborn County Landowners, enclosed please find Motion of Association of Freeborn County Landowners for Certification to Public Utilities Commission of Its Petition, and Petition to the Commission for Appointment of an Advisory Task Force and a Science Advisory Task Force.

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

Very truly yours,

Carol A. Overland
Attorney at Law

Enclosure

cc: Christina Bruesven, Fredricksen & Byron, for Freeborn Wind – via eFiling
Association of Freeborn County Landowners
Hard copy to ALJ Schlatter to follow

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
for the
MINNESOTA PUBLIC UTILITIES COMMISSION**

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

**MOTION OF ASSOCIATION OF FREEBORN COUNTY LANDOWNERS FOR
CERTIFICATION TO PUBLIC UTILITIES COMMISSION OF ITS PETITION,
AND PETITION TO THE COMMISSION, FOR APPOINTMENT OF AN
ADVISORY TASK FORCE AND A SCIENCE ADVISORY TASK FORCE**

The Association of Freeborn County Landowners (hereinafter “AFCL”) is an intervenor in the Freeborn Wind docket, above-captioned. The Association of Freeborn County Landowners hereby requests that an Advisory Task Force and a Science Advisory Task Force be appointed, as provided by Minn. Stat. §216E.08, Subd. 1 and Subd. 4, and the Commission alone has statutory authority to appoint task forces. Minn. Stat. §216E.08, Subd. 1 and Subd. 4.

The public participation section of the Power Plant Siting Act, Minn. Stat. §216E.08, is expressly not exempted and is applicable to wind siting projects under Minn. Stat. §216F:

216F.02 EXEMPTIONS.

(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.

Minn. Stat. 216F.02(a) (emphasis added).

The “Public Participation” statute is clear that public participation is fundamental:

Subd. 2. Other public participation.

The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section 216E.16.

Minn. Stat. §216E.08, Subd. 2 (emphasis added).

Toward that objective, the Association of Freeborn County Landowners requests that this request for appointment of an Advisory Task Force and a Scientific Advisory Task Force be certified to the Commission for consideration. Minn. R. 1405.2200.

I. MOTION FOR CERTIFICATION TO COMMISSION, WHICH HAS SOLE AUTHORITY TO DETERMINE WHETHER TO APPOINT TASK FORCES UNDER MINN. STAT. §216E.08, Subd. 1 and Subd. 4.

Under Minn. Stat. §216E.08, Subd. 1 and Subd. 4, the Public Utilities Commission has sole authority to establish task forces. The statute authorizing task forces, Minn. Stat. §216E.08, Public Participation, is, as above, expressly included in Power Plant Siting Act statutes applicable to wind project siting, and is expressly not exempted. Minn. Stat. §216F.08.

This Motion is brought under Minn. R. 1405.2200, which directs Motions to be made to the Administrative Law Judge for certification to the Commission. The Commission alone is granted authority to appoint an Advisory Task Force and a Scientific Advisory Task Force, hence this request for certification. Both task forces are needed in this docket to address the multiple matters of material fact in this proceeding, about which there is insufficient information available.

AFCL does not request a hearing on this matter, but if one is contemplated, request that it be held at earliest convenience so as not to delay the agreed-upon schedule for this proceeding.

Minn. R. 1405.2200; see also Minn. R. 1400.6600; 7829.0410.

I. THE COMMISSION SHOULD APPOINT AN ADVISORY TASK FORCE

An Advisory Task Force is a fundamental public participation option for the public to address issues before the Commission in its evaluation of sites:

216E.08 PUBLIC PARTICIPATION

Subdivision 1. Advisory task force.

The commission may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section [15.059, subdivision 6](#). At the time the task force is appointed, the commission shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the commission in the charge, whichever occurs first.

Minn. Stat. §216E.08, Subd. 1.

Public participation is particularly important in this proceeding for due process and fundamental fairness, as there has been no direct notice required or provided to landowners until the beginning of September, when notices were mailed out to landowner in the project footprint. There was no Certificate of Need, which requires a Notice Plan and extensive notice prior to the filing of application. There was no notice provided to landowners of Xcel Energy's resource acquisition docket approving this project for Xcel.¹ Once that acquisition was approved, without public notice and opportunity for input, it becomes not a matter of "if" but "where," which puts landowners at a significant disadvantage. There has been no public participation opportunity in this permitting process for affected landowners and members of the public until this point,

¹ PUC Docket E-002/M-16-777.

months after the application was filed in June. This project, approved as it was as a “resource acquisition,” has circumvented public notice and participation, and has stripped local landowners, residents, and members of the public of due process in determination of need for the project. Every opportunity for public participation should be utilized going forward, in line with the Commission’s commitment to “broad spectrum citizen participation as a principal of operation.” Minn. Stat. §216F.08, Subd. 2.

As a means of public participation, the statute proposes Advisory Task Force, and suggests local units of government as a floor for representation, not a ceiling, noting that the task force “shall be comprised of as many persons as may be designated by the commission.” Landowners and the public should be provided with opportunity to participate. Task forces have through history provided much needed “on the ground” information and contributed to understanding of and participation in the arcane siting process.

The charge of the Advisory Task Force is to be determined by the Commission and should be narrow and specific to this docket and issues raised. The Association of Freeborn County Landowners requests that the charge to the Advisory Task Force include material issues raised including wildlife habitat and foraging range, designated wetlands on private property, wind turbine sound, potential for shadow flicker and adequacy of setbacks in the interests of health, environment, and public safety. There would be no delay because task forces as scheduled by Commerce – EERA typically only meet three times, and often over a compressed time frame of three weeks or less. The schedule as agreed upon by the parties does not anticipate public and evidentiary hearings until the end of January into early February. Appointment of an Advisory Task Force would not prejudice any party, and would advance due process by affording a needed public participation step in the Commission's system of operation.

II. THE COMMISSION SHOULD APPOINT A SCIENTIFIC ADVISORY TASK FORCE.

Further, a Science Advisory Task Force is authorized for generic issues such as health and safety, concerns raised in the above-captioned Freeborn Wind docket.

216E.08 PUBLIC PARTICIPATION

Subd. 4. Scientific advisory task force.

The commission may appoint one or more advisory task forces composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long-range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees. The task forces expire as provided in section [15.059, subdivision 6](#). The time allowed for completion of a specific site or route procedure may not be extended to await the outcome of these generic investigations.

Minn. Stat. §216E.08, Subd. 4.

A Scientific Advisory Task Force would be helpful to the Commission to inform the record about impacts of wind turbines on human health and the environment. At present, for example, there are no rules that address infrasound generated by wind turbines. In response to a Petition for Ch. 7030 Rulemaking (noise) which failed to initiate the rulemaking process, the MPCA's Commissioner stated:

After consulting with colleagues at the Minnesota Departments of Health and Commerce, I have concluded that the current understanding of wind turbine noise and its potential effects is insufficient to support rulemaking at this time. Discussions will continue among the agencies listed above and we will monitor the science (as resources allow) to inform our decision about rulemaking in the future.

Letter, John Linc Stine, MPCA, to Carol Overland, September 12, 2016 (attached). Not having sufficient information is reason to investigate. Further, as the Commission knows, sound monitoring was ordered to address the multiple Bent Tree complaints, but as the Commission may not know, the sound monitors were removed in July and have not been replaced. How will

monitoring be completed without monitors in place? How will the “current understanding of wind turbine noise and its potential effects” become sufficient without an effort to gather information and inform the agencies? This could be best accomplished with a charge to a Scientific Advisory Task Force with oversight by, and reporting to, the Commission.

This is the appropriate time for the Commission to appoint a Scientific Advisory Task Force, and under the statute, it may not extend the siting schedule, so delay is not a concern. The timing is ripe for a Scientific Advisory Task Force because the Commission has Ordered sound studies for the Bent Tree wind project in response to multiple complaints of wind noise and shadow flicker that have not abated over time. The sound study order requires that sound monitoring equipment be placed at locations near complainants’ property to determine sound levels of the project. Some attempts at mitigation of been proffered, such as blinds over windows to address shadow flicker. But thus far, this study has produced nothing. On the other hand, now another wind project has been proposed in Freeborn County, without sound monitoring to inform the record.

The charge of the Scientific Advisory Task Force should be targeted to address the areas identified by Commissioner Stine as insufficient, including public health impacts of wind turbines, specifically including issues raised by the Dept. of Health in the Commission’s docket 09-845. The Association of Freeborn County Landowners requests that inquiry regarding these issues, wind turbine sound, potential for shadow flicker and adequacy and consistency of setbacks in the interests of health and public safety be included in the charge for the Scientific Advisory Task Force and that a report be drafted by the Task Forces. Incorporation of this information is necessary to fully inform the record in all wind siting dockets and to assure these issues are addressed. A Scientific Advisory Task Force is an authorized vehicle for these

concerns to be raised and this inquiry to occur. The study underway via Commerce can be incorporated into the work of the Scientific Advisory Task Force and instant docket as the studies and work of the Science Advisory Task Force becomes available. The Scientific Advisory Task Force may not complete its work prior to the end of Comment Period and Briefing as scheduled for this docket, but that is no reason for a delay in appointment and charge to a Scientific Advisory Task Force. Appointment of a Scientific Advisory Task Force would not prejudice any party, and would advance building the record regarding impacts of wind turbines.

III. CONCLUSION

At this time the Association of Freeborn County Landowners moves and requests that an Advisory Task Force and a Scientific Advisory Task Force be appointed by the Commission under its authority under Minn. Stat. §216E.08, Subd. 1 and Subd. 4, and requests that this matter be certified to the Commission for consideration of appointment of the Advisory Task Force and Scientific Advisory Task Force. The Commission alone has authority to appoint task forces. Minn. R. 1405.2200.

September 20, 2017



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overland@legalelectric.org

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
for the
MINNESOTA PUBLIC UTILITIES COMMISSION**

CERTIFICATE OF SERVICE

ASSOCIATION OF FREEBORN COUNTY LANDOWNERS

**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

I, Carol A. Overland, hereby certify that I have this day, served copies of the attached Motion for Certification and Petition for Advisory and Scientific Advisory Task Forces by electronic filing and eService .



September 20, 2017

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Minnesota Pollution Control Agency

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800-657-3864 | 651-282-5332 TTY | www.pca.state.mn.us | Equal Opportunity Employer

September 12, 2016

Carol Overland
Legalelectric, Inc.
1110 West Avenue
Red Wing, MN 55066

Dear Ms. Overland:

RE: Petition for Rulemaking for Wind Turbine Noise Standards, Minnesota Rules Chapter 7030

After consulting with colleagues at the Minnesota Departments of Health and Commerce, I have concluded that the current understanding of wind turbine noise and its potential effects is insufficient to support rulemaking at this time. Discussions will continue among the agencies listed above, and we will monitor the science (as resources allow) to inform our decision about rulemaking in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "John Linc Stine".

John Linc Stine
Commissioner

cc: Commissioner Ehlinger, Minnesota Department of Health
Commissioner Rothman, Minnesota Department of Commerce
Executive Secretary Daniel Wolf, Public Utilities Commission