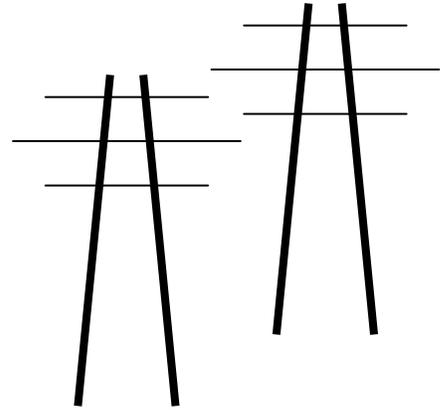


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October 4, 2017

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

via eFiling and eService

RE: Reply to Freeborn Wind Energy's Response to AFCL's Motion & Petition
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 ACLU's Reply to Freeborn Wind Energy's Response to AFCL's Motion & Petition .

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

**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 Reply to Freeborn Wind Energy's Response to AFCL's Motion & Petition by electronic filing and eService.



October 4, 2017

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

In the Matter of the Application of Freeborn
Wind Energy, 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 OF ASSOCIATION OF FREEBORN COUNTY LANDOWNERS TO
FREEBORN'S RESPONSE TO MOTION FOR
CERTIFICATION TO PUBLIC UTILITIES COMMISSION 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") has this Reply to Applicant's Response to Association of Freeborn County Landowners Motion for Certification and Petition for Appointment of an Advisory Task Force and a Science Advisory Task Force.

I. MINN. STAT. §216E.08 IS APPLICABLE TO THIS PROJECT.

The statute authorizing Task Forces is expressly not exempted and is applicable to wind siting dockets, the law is clear:

(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 EXEMPTIONS (emphasis added). Applicants may not like it, but the law is the law.

II. PETITION IS NOT UNTIMELY – THERE ARE NO TIME CONSTRAINTS IN THE STATUTE, AND THE COMMISSION BY

STATUTE MAY SET A DATE FOR EXPIRATION OF AN ADVISORY TASK FORCE.

Freeborn argues that AFCL’s request for an Advisory Task Force is untimely and that it “fails to comport with the timing constraints on an Advisory Task Force,” arguing that the intent is “an Advisory Task Force that would persist through the contested case proceeding.” Response, p. 8.

Despite Applicant’s claim, an unending Task Force won’t occur – that is legally prohibited. The Commission identifies the date for the advisory task force to expire, clearly authorized in two separate statutes.

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... **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 (emphasis added). “If the existence of a task force is authorized but not mandated by statute, the task force shall expire at the pleasure of the person or group which creates the task force...” Minn. Stat. §15.059, Subd. 6. In 2001, language was added to assure that a Task Force did not extend through the contested case, as had occurred in the Chisago I proceeding:

At the time the task force is appointed, the board shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the board of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the board in the charge, whichever occurs first.

2001 Session Laws, Chapter 212, Art. 7, Section 18¹. Applicant’s nightmare apparition of “an Advisory Task Force that would persist through the contested case proceeding” is not only imagined, it is prohibited.

Advisory Task Forces now typically meet just 3 times in as many weeks, as scheduled by the Department of Commerce. AFCL requests that the Advisory Task Force be appointed, and that the date the Advisory Task Force expires be set no later than December 11, 2017, the same date as the Intervention deadline. This would not delay the docket schedule.

III. THE PURPOSE OF AN ADVISORY TASK FORCE IS TO ASSEMBLE INFORMATION AND EVALUATE SITES.

The purpose of an Advisory Task Force is to inform the record and to evaluate sites and propose alternatives sites for consideration. A task force is not limited by statute to scoping for environmental review. Again, referring back to the statute:

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... 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 (emphasis added). Evaluating sites and proposing alternate sites is a legitimate purpose for a task force authorized under the statute. *Id.* Matters including wildlife habitat, shadow flicker and setback with these and other issues in mind falls within site evaluation and proposing alternate sites. *Id.* This is not beyond the scope of a reasonable Task Force charge.

¹ Online at: <https://www.revisor.mn.gov/laws/?id=212&year=2001&type=0>

It is not AFCL's fault that there is no environmental review for a siting wind project – that was the doing of the legislature and those who lobbied for the passage of the wind siting statutes. The lack of environmental review and wind-specific siting criteria is a significant factor contributing to the difficulty of siting wind projects. As it is, the Department of Commerce prepares the Draft Site Permit, and that document contains information and conditions under which the project may be permitted. An Advisory Task Force will help inform the record and provide information to support siting alternatives, a subsequent permit, and its conditions.

IV. A PETITION FOR A SCIENTIFIC ADVISORY TASK FORCE IS NOT A RULEMAKING PETITION!

Applicant makes the claim that:

AFCL's request for a Scientific Advisory Task force is, quite transparently, a second try to commence a rulemaking relating to wind turbine noise.

Response, p. 8. Applicant's conclusion is bizarre. AFCL's counsel's Rulemaking Petitions and Task Force Petitions are a matter of record, having submitted many of both types over the years². Both of Applicant's attorneys of record, and AFCL's attorney of record, have spent more than five years working together, with others³, on the Commission's Certificate of Need and power plant siting/transmission routing rules, Chapters 7849 and 7850.⁴ This background should be fresh in all our minds.

If a second try to commence rulemaking was desired, there would be another rulemaking petition... and there will be. The Commission requested a restatement of an earlier Ch. 7854 Rulemaking Petition. A draft revision of this petition was forwarded to Goodhue Wind Truth for

² Petitions for Rulemaking include Minn. R. Ch. 1400 and 1405, Minn. R. Ch. 7030, Minn. R. 7840 and 7850, Minn. R. Ch. 7829, and two regarding Minn. R. Ch. 7854, the wind siting rules in 2012 and 2016 and again in the near future after adoption of Minn. R. 7849 and 7850. Successful Task Force Petitions have included those for CapX Fargo, Brookings and LaCrosse transmission lines, Chisago transmission line, and the Excelsior Energy Mesaba Project, among others.

³ PUC Docket R-12-1246. Participants include Goodhue Wind Truth's Marie McNamara and North Route Group's Suzanne Rohlfiing.

⁴ See PUC Docket R-12-1246, still to come before the Commission for release for comment.

review some time ago, and GWT is waiting until the Minn. R. 7849 and 7850 rules are released for comment, and it will be refiled if the promised Minn. R. 7854 rulemaking does not begin soon. Wind siting rules and standards are sorely needed.

MPCA's Commissioner states that there is not enough information for a Minn. R. Ch. 7030 rulemaking, and the Scientific Advisory Task Force seems an ideal way to develop the record to the point where that rulemaking for Ch. 7030 and 7854 would be deemed appropriate and feasible, and could commence. The purpose of a Scientific Advisory Task Force is to do this general work. By statute, the Freeborn Wind Energy project docket may not be delayed pending the Scientific Advisory Task Force's conclusion of its charge, so Freeborn needn't worry about delay. This limitation should appease Freeborn Wind Energy, and Freeborn's unsupported claims and concerns should not prevent this important and necessary work on "issues presented in other wind siting proceedings." Indeed, "[t]here is nothing new or unique" about these issues – it's recurrent old business that remains unaddressed. Appointment of a Scientific Advisory Task Force is overdue.

V. CONCLUSION

The Association of Freeborn County Landowners appreciates Freeborn Wind Energy's agreement to certification to the Commission. AFCL requests that an Advisory Task Force be appointed by the Commission under its authority under Minn. Stat. §216E.08, Subd. 1 as authorized by Minn. R. 1405.2200, and that the Commission set a date certain for the Advisory Task Force to expire.

AFCL also requests a Scientific Advisory Task Force be established under Minn. Stat. §216E.08, Subd. 4, as authorized by Minn. R. 1405.2200.

The Commission alone has authority to appoint task forces. AFCL requests that the

Commission begin to address wind siting issues within its statutory authority by appointing an Advisory Task Force and a Scientific Advisory Task Force.



October 4, 2017

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