

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147**

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

**MINNESOTA DEPARTMENT OF COMMERCE,
ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS (DOC EERA)
MOTION TO QUASH SUBPOENA**

The Minnesota Department of Commerce Energy, Environmental Review and Analysis, (DOC EERA) submits this Motion to Quash a Hearing Subpoena served upon Louise Miltich, an employee of DOC EERA compelling her to appear for an evidentiary hearing in this Freeborn Wind¹ matter.

To the extent that the Hearing Subpoena, issued at the request of Intervenor AFCL Legalectric, requires Ms. Miltich to testify regarding her knowledge of noise monitoring at the entirely separate 200 MW Bent Tree Wind Farm project (Bent Tree), a project on which Ms. Miltich previously worked, the Hearing Subpoena is unreasonable and oppressive because Ms. Miltich's knowledge of Bent Tree has no relevance to this *Freeborn Wind* docket.

Ms. Miltich is not an expert on the monitoring and acoustics of wind generation, but she does have experience generally on these subjects. To the extent that the Subpoena seeks to make

¹ *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, OAH Docket No. 80-2500-34633; MPUC Docket No. IP-6946/WS-17-410. (Freeborn Wind)*

Ms. Miltich, a non-party public servant, into an involuntary, uncompensated expert witness on behalf of Intervenor AFCL Legalectric, the subpoena is unreasonable or oppressive because it subjects her to the undue and unnecessary burden of travelling to an out-state evidentiary hearing to which neither she nor the EERA are parties.

The subpoena should be quashed.

FACTUAL BACKGROUND

As the Court is aware, on December 5, 2017, upon the request of Intervenor AFCL Legalectric, Administrative Law Judge (ALJ) Laura Sue Schlatter issued a Hearing Subpoena to Ms. Louise Miltich, who is an employee of the DOC EERA but not assigned to the *Freeborn Wind* docket, as well as a Subpoena for the Production of Documents to Ms. Miltich and to Ms. Heidi Retterath, another employee of the Department of Commerce.

The Hearing Subpoena commanded Ms. Miltich to appear at a venue to be determined in the city of Albert Lea, in Freeborn County, Minnesota, on Thursday, February 22, 2018, at 9:30 a.m., to appear as a witness in this *Freeborn Wind* docket.² Attachment 1, p. 5 of 6. The Subpoena for the Production of Documents commanded that, by December 10, 2017, Ms. Miltich and Ms. Retterath provide to Intervenor AFCL Legalectric, the following four categories of data regarding the the 200 MW Bent Tree project located northwest of Albert Lea in Freeborn County, (Bent Tree) a wind farm that had been developed and was owned by Wisconsin Power and Light Company (WPL), subject to the caveat that “public documents, i.e.,

² *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*, MPUC IP-6946/WS-17-410, OAH docket number 80-2500-34633.

public Bent Tree Noise Monitoring and Monitoring Report, *to be reviewed in testimony*, need not be produced.³”

- Raw data and reports from and regarding sound monitoring performed;
- curtailment data from the time monitors were placed until the time they were removed;
- emails and correspondence and notes from telephone conversations between DNV-GL and or other consultants and Commerce; and
- emails and correspondence and notes between Commerce and MPCA regarding wind turbine noise.

Attachment 1, p. 6 of 6.

The identical documents had been requested by Intervenor AFCL Legalectric in a data practices request sent to Ms. Miltich on September 9, 2017 that requested, regarding “Sound Monitoring Data, Bent Tree Wind Project – PUC Docket 08-573” the same four categories of data:

- Raw data and reports from and regarding sound monitoring performed prior to removal of the monitors, and if replaced, to the present;
- curtailment data from the time monitors were placed until the time they were removed;
- emails and correspondence and notes from telephone conversations between DNV-GL and or other consultants and Commerce; and
- emails and correspondence and notes between Commerce and MPCA regarding wind turbine noise.

Attachment 4.

On December 18, 2017, a copy of the two subpoenas were e-mailed by Intervenor AFCL Legalectric to counsel for the DOC EERA. Attachment 1, pp. 1 to 3 of 6.

On December 18, the DOC EERA fully responded to the Subpoena for the Production of Documents (and to the September 19, 2017 data practices request) by providing all responsive

³ Attachment 1, p. 6 of 6 (emphasis added).

public documents in its possession to Intervenor AFCL Legalectric. Attachment 1, pp. 1-2 and Attachment 3.⁴

On December 29, 2017, Ms. Miltich executed an acceptance of service for the subpoenas, and on January 2, 2018, Ms. Overland e-filed the acceptance of service. Attachment 2, pp. 1-3.

Ms. Miltich, in her capacity as the DOC EERA Planner Principal, oversaw the consultant completing the noise monitoring at the Bent Tree wind farm in Freeborn County, Minnesota.

ARGUMENT

Minn. Rule 1405.1300 subpart 3 allows an ALJ to quash or modify a subpoena on finding that it is “unreasonable or oppressive.” The Hearing Subpoena served on Ms. Miltich is unreasonable and oppressive because Ms. Miltich has no knowledge of matters having relevance to the *Freeborn Wind* docket but the subpoena subjects her, a public servant, to the undue and unnecessary burden of travelling to an out-state hearing, to serve as a witness or expert witness for a private litigant, in a matter to which neither she⁵ nor the DOC EERA are parties.

⁴ As part of its response to the Subpoena for the Production of Documents (and to the September 9, 2017 data practices request), DOC EERA provided all the information in its possession, including a redacted (public) version of a data relating to curtailment by Bent Tree Wind Farm. That data had been marked “TRADE SECRET” by Wisconsin Power and Light Company (WPL) the owner of Bent Tree and the party that provided the data to DOC EERA. WPL also provided to DOC EERA information identifying the basis on which WPL had claimed the data to be non-public, which DOC EERA shared with Intervenor AFCL Legalectric. Attachment 1, pp. 1-2 and Attachment 3.

Although Intervenor AFCL Legalectric could have sought further data pertaining to Bent Tree from WPL, Ms. Miltich attempted to assist Intervenor AFCL Legalectric by contacting WPL and requesting that it create and provide to DOC EERA new data -- that limited WPL’s trade secret designations in such a way that the information that AFCL sought—the hours and dates of curtailment of turbines—was not marked trade secret or redacted. WPL did so and provided the new information to DOC EERA, who in turn immediately provided this public data to AFCL, on January 8, 2018. Attachment 4. This data allows a reader to identify the days and hours during which Bent Tree turbines were curtailed.

⁵ The DOC EERA analyst responsible for this Freeborn Wind docket is Richard Davis.

1. MS. MILTICH'S KNOWLEDGE REGARDING BENT TREE IS NOT RELEVANT TO THE FREEBORN WIND DOCKET

The Bent Tree monitoring data requested by Intervenor AFCL Legalectric via the Hearing Subpoena, in the September 19 data practices request, and in the Subpoena for the Production of Documents are not relevant to the *Freeborn Wind* docket. It is not relevant because it is neither reasonable or defensible to apply wind monitoring or noise-related setbacks from one project to another project.

Noise impacts depend on the specific site, turbine model and a variety of other factors that are not the same across different projects.⁶ Monitoring and compliance are specific to each project. Ms. Miltich has no specific knowledge of the Freeborn Wind project as she has not been involved in any site-specific monitoring or compliance analyses for the Freeborn Wind farm. What the acoustic monitoring may show for Bent Tree is a matter involving different facts.

As documented in an attachment to a letter recently e-filed by Intervenor AFCL Legalectric in this *Freeborn Wind* docket,⁷ a post-construction noise assessment for Bent Tree was conducted by an expert consultant, Garrad Hassan America, Inc. to determine noise levels at the Bent Tree site, which consists of a specific layout of 122 turbines, model Vestas V82-1.65 MW.

The Freeborn Wind Project, on the other hand, is proposed to consist of only 42 turbines, Vestas V116 and V110 2 MW models. The Site Permit Application in this *Freeborn Wind* docket, at Appendix B included a Pre-Construction Noise Analysis conducted by consultant

⁶ Similarly, non-compliance at one site would not support an assumption of non-compliance at another site, and developers cannot assume that a project is in compliance because data from other wind farms shows compliance.

⁷ Intervenor AFCL Legalectric, Corrected Letter, Dec. 29, 2017, e-filed Jan. 2, 2018, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=201712-138507-01>) p. 1

Hankard Environmental, Inc.; that analysis appropriately is based on the *specific* turbine models and *specific* layout proposed for the Freeborn Wind site.

The results of the Bent Tree noise monitoring and assessment are simply not relevant to this *Freeborn Wind* project.⁸

2. THE SUBPOENA UNREASONABLY REQUIRES A NON-PARTY PUBLIC OFFICIAL TO TRAVEL TO A PLACE OUTSIDE THE COUNTY WHERE SHE RESIDES, IS EMPLOYED OR REGULARLY TRANSACTS BUSINESS IN PERSON.

If not quashed, the Hearing Subpoena would make Ms. Miltich, a public employee, into an involuntary, uncompensated expert witness on behalf of Intervenor AFCL Legalectric. The Hearing Subpoena is unreasonable and oppressive because it subjects Ms. Miltich to the undue and unnecessary burden of travelling to an out-state evidentiary hearing to which neither she nor her employer, the DOC EERA, are parties. In *Ellingson & Associates, Inc. v. Keefe*, 396 N.W.2d 694 (Minn. Ct. App. 1986) rev. denied (Jan. 21, 1987). The court affirmed that:

[P]ublic policy requires that the time and energies of public officials be conserved for the public's business to as great an extent as may be consistent with the ends of justice in particular cases. Considering the volume of litigation to which the government is a party, a failure to place reasonable limits upon private litigants' access to responsible governmental officials as source of expertise would result in a severe disruption of the government's primary function.

396 N.W.2d at 696-97, citing *Community Federal Savings & Loan v. Federal Home Loan Bank*, 96 F.R.D. 619, 621 (D.D.C.1983). It is unreasonable, disruptive, and burdensome for a public servant such as Ms. Miltich to be to be compelled to travel to Albert Lea to provide testimony on behalf of a private interest.

⁸ Although Ms. Miltich is familiar with complaints to the Commission involving Bent Tree, those complaints are specific to the Bent Tree site and the specific course she recommended for that site. To the extent AFCL has concerns regarding the Commission's complaint-handling process, that is an issue to be taken up separately with the Commission; it is not appropriate or relevant to the ALJ's Recommendation, nor to the Commission's decision, whether to issue a Draft Site Permit for the Freeborn Wind Project.

The interest of EERA and the State in its employees being turned into involuntary experts for a private litigant outweighs the interest of the litigant in gaining access to Ms. Miltich's modest general knowledge regarding the acoustic testing of wind generators. This is especially the case where the EERA has been more than fully responsive to the requests of Intervenor AFCL Legalectric, by providing not only all written data in its possession regarding the Bent Tree testing, but also, as noted above in footnote 4 above, but also undertook to ask WPL to review its trade secret designations and create new documents that DOC EERA then provided to Intervenor AFCL Legalectric. The ALJ should balance the interest of the EERA and State against the interest of the private litigant and require Intervenor AFCL Legalectric to obtain further information it may need on acoustic testing from its own consultant, from WPL's consultant on Bent Tree, directly from Bent Tree or from other resources, but not by means of a disruptive and burdensome subpoena requiring a public servant such as Ms. Miltich to be to be compelled to travel to Albert Lea.

To the extent that Minn. Rules Ch. 1405 are silent, and the Minnesota Rules of Civil Procedure are instructive,⁹ Minn. R. Civ. P. 45.03 would allow a court to quash or modify a subpoena that requires that a person travel to a place outside the county where that person resides, is employed or regularly transacts business in person, or otherwise subjects a person to

⁹ Minn. Rules 1400.6600, regarding motions in contested cases, states that “[i]n ruling on motions where parts 1400.5100 to 1400.8400 are silent, the judge shall apply the Rules of Civil Procedure for the District Court for Minnesota to the extent that it is determined appropriate in order to promote a fair and expeditious proceeding.” Minn. Stat. § 14.51 states, “upon written request of an interested party, the chief administrative law judge may issue a subpoena for the attendance of a witness or the production of books, papers, records or other documents as are material to any matter being heard by the Office of Administrative Hearings. The subpoenas shall be enforceable through the district court in the district in which the subpoena is issued.”

undue burden.¹⁰ The hearing is scheduled to take place in Freeborn County. Ms. Miltich resides and works in Ramsey County, and does not regularly transact business in Freeborn County.

CONCLUSION

For the foregoing reasons, the Hearing Subpoena issued to Ms. Miltich should be quashed.

January 16, 2018

Respectfully submitted,

/s/ Linda S. Jensen

LINDA S. JENSEN
Assistant Attorney General
Atty. Reg. No. 0189030

445 Minnesota Street, Suite 1800
St. Paul, MN 55101-2134

ATTORNEYS FOR MINNESOTA
DEPARTMENT OF COMMERCE,
ENVIRONMENTAL REVIEW AND ANALYSIS

¹⁰ On timely motion, a court may quash or modify a subpoena if it “requires a person who is not a party to travel to a place outside the county where that person resides, is employed or regularly transacts business in person.” Minn. R. Civ. P. 45.03(c) (1) (B). Further, a non-party witness who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. Minn. R. Civ. P. 45.03(d).

-----Original Message-----

From: Carol A. Overland [mailto:overland@legalelectric.org]
Sent: Monday, December 18, 2017 9:54 PM
To: Jensen, Linda S
Subject: Hearing Subpoena & Subpoena for Documents -- Freeborn Wind 17-410
Importance: High

Linda -

Attached please find mailing of AFCL's Freeborn Wind subpoenas for hearing testimony and documents that went out today. Apologies for the delay. I sent it hard copy, but am sending it via email assuming you're not in the office.

I needed to send both out to preserve options, although I did receive a response to the Data Practices Act request. Today I received word from Louise Miltich that she was not sending curtailment information, that it was deemed protected. See next email.

Carol

--

"Our lives begin to end the day we become silent about the things that matter." Dr. Martin Luther King, Jr.

Carol A. Overland
Attorney at Law
Legalelectric - Overland Law Office
1110 West Avenue
Red Wing, MN 55066

612-227-8638

overland@legalelectric.org

www.legalelectric.org

www.nocapx2020.info

www.not-so-great-northern-transmission-line.org

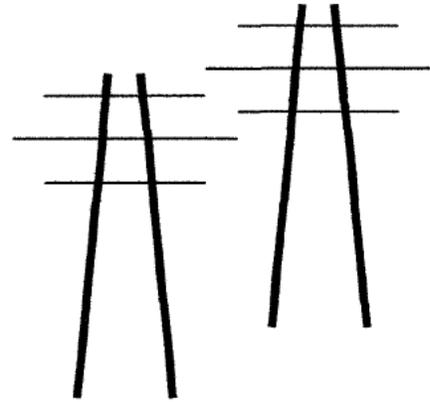
This email has been checked for viruses by Avast antivirus software.

<https://www.avast.com/antivirus>

Legalelectric, Inc.

Carol Overland **Attorney at Law, MN #254617**
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



December 18, 2017

Linda S. Jensen
Asst. Attorney General
525 Park Street, Suite 200
St. Paul, MN 55103-2106

via email: Linda.S.Jensen@ag.state.mn.us

RE: Hearing Subpoena for Louise Miltich and Subpoena for the Production of
 Documents
 Freeborn Wind Farm Project
 OAH Docket: 80-2500-34633
 MPCU Docket: IP-6946/WS-17-410

Dear Ms. Jensen:

On behalf of Association of Freeborn County Landowners, enclosed please find Hearing Subpoena for Louise Miltich and Subpoena for the Production of Documents.

You'd verbally agreed to accept service, and I appreciate that very much.

I have included the Subpoena for the Production of Documents because, although I have received a thumb-drive with documents in response to the Data Practices Act Request, I've not been able to open the ".bin" files and have assigned that to a technologically competent member of AFCL to crack. Also, that subpoena must be served to preserve our options if we find it's not sufficiently responsive. Soooo, here it is.

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

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law

Enclosures

**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, mailed copies of the attached Hearing Subpoena for Louise Miltich and Subpoena for the Production of Documents by U.S. Mail and email.

December 18, 2017



Carol A. Overland MN #254617
Attorney for Association of Freeborn
County Landowners
Legalelectric – Overland Law Office
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

**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

ACCEPTANCE OF SERVICE

I, _____, of the Minnesota Department of Commerce, do
hereby admit and accept receipt of a Hearing Subpoena for Louise Miltich and a Subpoena for the
Production of Documents, both dated December 5, 2017.

Dated _____

For Minnesota Department of Commerce

Signed and sworn to before me this ___ day
of _____, 2017.

Notary Public



HEARING SUBPOENA

TO: Louise Miltich, Energy Environmental Review and Analysis, Minnesota Department of Commerce, 85 Seventh Place East, Suite 280, St. Paul, MN 55101

This subpoena is issued pursuant to Minn. Stat. § 14.51 (2016).

You are commanded to appear before Administrative Law Judge Laura Sue Schlatter of the Office of Administrative Hearings of the state of Minnesota at a venue to be determined in the city of Albert Lea, Minnesota, on Thursday, February 22, 2018, at 9:30 a.m., to appear as a witness *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*, docket number 80-2500-34633.

Dated: December 5, 2017

LAURASUE SCHLATTER
Administrative Law Judge

Subpoena requested by: Carol A. Overland, for Intervenor AFCL Legalectric



SUBPOENA FOR THE PRODUCTION OF DOCUMENTS

TO: Louise Miltich, Energy Environmental Review and Analysis, and Heidi Retterath,
Minnesota Department of Commerce, 85 Seventh Place East, St. Paul, MN 55101

This subpoena is issued pursuant to Minn. Stat. § 14.51 (2016).

You are commanded to provide to Carol A. Overland, for Intervenor AFCL Legalectric, via electronic service via email, or disc, thumb drive, or hard copy to be picked up at Minnesota Department of Commerce, by the 10th day of December 2017, *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*, docket number 80-2500-34633, the following documents for inspection and copying:

Raw data and reports from and regarding sound monitoring performed; curtailment data from the time monitors were placed until the time they were removed; emails and correspondence and notes from telephone conversations between DNV-GL and or other consultants and Commerce; and emails and correspondence and notes between Commerce and MPCA regarding wind turbine noise. Other public documents, i.e., public Bent Tree Noise Monitoring and Monitoring Report, to be reviewed in testimony, need not be produced.

Please take notice that, pursuant to Minn. R. 1400.7000, subp. 3 (2017), upon motion made promptly, and in any event before the time specified in the subpoena for compliance, the Administrative Law Judge assigned to this case may quash or modify any subpoena which is found to be unreasonable or oppressive.

Dated: December 5, 2017

A handwritten signature in black ink that reads 'Laurasue Schlatter'. The signature is written in a cursive style and is positioned above a horizontal line.

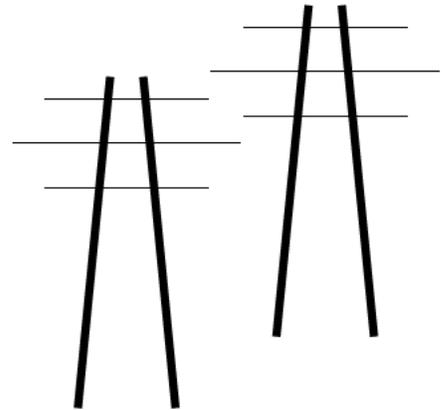
LAURASUE SCHLATTER
Administrative Law Judge

Subpoena requested by: Carol A. Overland, for Intervenor AFCL Legalectric

Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



January 2, 2018

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

via email and eDockets

RE: Affidavits and Acceptance of Service – Subpoenas
Freeborn Wind siting docket
OAH Docket: 80-2500-34633
MPCU Docket: IP-6946/WS-17-410

Dear Judge Schlatter:

Attached please find Affidavits and Acceptance of Service of Subpoenas on Departments of Commerce, Health, and Natural Resources. Originals will be filed as hearing exhibits.

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

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law

Enclosures: Acceptance of Service, Miltich, Dept. of Commerce; Affidavits of Service for Mixon and Joyal, Dept. of Natural Resources and Allwood, Dept. of Health.

Cc via eDockets: Christina Bruesven, Lisa Agrimonti, Fredricksen & Byron, for Freeborn Wind
Richard Savokaul, for KAAL
Association of Freeborn County Landowners

**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, filed via eDockets the attached Affidavits and Acceptance of Service.



January 2, 2017

Carol A. Overland MN #254617
Attorney for Association of Freeborn
County Landowners
Legalelectric – Overland Law Office
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

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

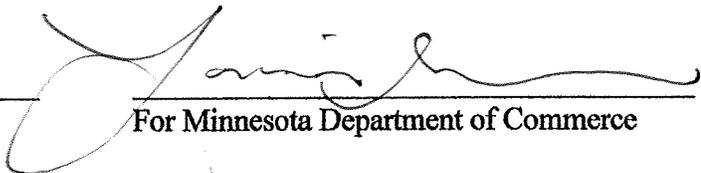
In the Matter of the Application of Freeborn
Wind Farm, LLC for a Large Wind Energy
Conversion System Site Permit for the 84
MW Freeborn Wind Farm in Freeborn
County.

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

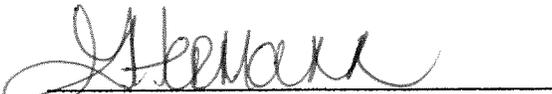
ACCEPTANCE OF SERVICE

I, Louise Miltich, of the Minnesota Department of Commerce, do
hereby admit and accept receipt of a Hearing Subpoena for Louise Miltich and a Subpoena for the
Production of Documents, both dated December 5, 2017.

Dated 12/29/17


For Minnesota Department of Commerce

Signed and sworn to before me this 29 day
of December, 2017.


Notary Public



RAMSEY COUNTY SHERIFF'S OFFICE

Return # 21528

Process # C2017009117

Docket #

Reference #

STATE OF MINNESOTA }
COUNTY OF RAMSEY }

CAROL A. OVERLAND, FOR INTERVENOR }
AFCL LEGALELECTRIC }

Plaintiff, }

- vs - }

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 }

Defendant }

AFFIDAVIT OF SERVICE

I, **Ying Yang**, Deputy Sheriff of Ramsey County, hereby affirm that on the **21st day of December, 2017 at 12:54 PM, a HEARING SUBPOENA**, in the above entitled action, came into my hand for service. That on the **22nd day of December, 2017 at 8:30 AM**, in said county and state, I did serve the documents on **PAUL ALLWOOD, ASSISTANT COMMISSIONER at 625 ROBERT ST N (MN DEPT OF HEALTH), ST PAUL, MN 55101**. By leaving a copy at the place of **PAUL ALLWOOD, ASSISTANT COMMISSIONER's** usual abode with **WENDY ANNERL (RECEPTIONIST)**, a person of suitable age and discretion, at **625 ROBERT ST N (MN DEPT OF HEALTH), ST PAUL, MN 55101**.

Comments

Date Returned 12/22/17

Ying Yang # 457

Signed

Date 12/22/17

Jack Serier
Ramsey County Sheriff
By: Deputy Ying Yang
425 GROVE ST
ST PAUL, MN 55101
Phone: (651) 266-9330

RAMSEY COUNTY SHERIFF'S OFFICE

Return # 21408
Process # C2017008934
Docket #
Reference #

STATE OF MINNESOTA }
COUNTY OF RAMSEY }
 }
 }
CAROL A. OVERLAND, FOR INTERVENOR }
AFCL LEGALELECTRIC }
Plaintiff, }
- vs - }
NONE LISTED }
Defendant }

AFFIDAVIT OF SERVICE

I, **Ying Yang**, Deputy Sheriff of Ramsey County, hereby affirm that on the **15th day of December, 2017** at **1:40 PM**, a **HEARING SUBPOENA**, in the above entitled action, came into my hand for service. That on the **18th day of December, 2017** at **9:25 AM**, in said county and state, I did serve the documents on **LISA JOYAL, NATIONAL HERITAGE DATA NONGAME PROGRAM** at **500 LAFAYETTE RD DNR, ST PAUL, MN 55155**.

By leaving a copy at the place of **LISA JOYAL, NATIONAL HERITAGE DATA NONGAME PROGRAM**'s usual abode with **LORI J PETERSON (LEGAL ASSISTANT)**, a person of suitable age and discretion, at **500 LAFAYETTE RD DNR, ST PAUL, MN 55155**.

Comments

Date Returned 12/18/17

Ying Yang # 457

Signed

Date 12/18/17

Jack Serier
Ramsey County Sheriff
By: Deputy Ying Yang
425 GROVE ST
ST PAUL, MN 55101
Phone: (651) 266-9330

**BROWN COUNTY SHERIFF'S OFFICE
CERTIFICATE OF SERVICE**

**STATE OF MINNESOTA
COUNTY OF BROWN**

I hereby certify that on the 11th day of December, 2017, at 10:19 am, at 21371 Hwy 15 S
in the township/city of New Ulm, in the County of Brown, State of Minnesota, I duly served the following:

- | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|--------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Summons and Complaint | <input type="checkbox"/> Order to Show Cause | <input type="checkbox"/> Emergency Ex Parte
Order for Protection and
Petition |
| <input type="checkbox"/> Eviction Summons and Complaint | <input type="checkbox"/> Notice of Motion | <input type="checkbox"/> Order for Hearing |
| <input type="checkbox"/> Summons and Petition | <input type="checkbox"/> Motion | <input type="checkbox"/> Garnishment Summons |
| <input checked="" type="checkbox"/> Subpoena | <input type="checkbox"/> Affidavit | <input type="checkbox"/> Order |
| <input type="checkbox"/> Notice of Mortgage Sale, Homestead Designation Notice,
Help for Homeowners in Foreclosure pursuant to MN Stat. 580.041,
Advice to Tenants in Foreclosure pursuant to MN Stat. 580.042,
Redemption Notice | | <input type="checkbox"/> Order Granting Petition for
Ex Parte Harassment
Restraining Order |
| <input type="checkbox"/> Recommendation of Supervising Agency to Stay,
Show Cause or Order for Warrant | | |
| <input type="checkbox"/> Other _____ | | |

UPON THE FOLLOWING PARTY OR CORPORATION Kevin Mixon

By personally leaving a copy with _____

By leaving a copy at the place of Kevin Mixon's usual abode with
Emily Kral - receptionist, a person of suitable age and discretion, then residing therein.

CERTIFICATE OF UNSERVED PROCESS

The attached process is returned for the following reason(s):

- | | | |
|----------------------------------------------------|--------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> Person unknown at address | <input type="checkbox"/> No such address | <input type="checkbox"/> Service cancelled by litigant |
| <input type="checkbox"/> No response | <input type="checkbox"/> Person moved, address unknown | |
| <input type="checkbox"/> Other _____ | | |

Sheriff's Fee \$ _____

Travel \$ _____

Total \$ _____

Rich Hoffmann
Sheriff of Brown County

By 
Deputy Randee Murphy

Date: 12/11/17

----- Forwarded Message -----

Subject:Re: 9/19/17 Bent Tree Data Practices Act Request - Curtailment Information

Date:Mon, 18 Dec 2017 18:13:19 -0600

From:Carol A. Overland <overland@legalectric.org>

To:Miltich, Louise (COMM) <louise.miltich@state.mn.us>

Louise -

Thanks for this. What doesn't make sense is that this is not Energy Production Data that I'm looking for, only times of curtailment, which is the opposite of "Energy Production Data." Also, it's only for that short period of the study.

Not OK!

Carol A. Overland

On 12/18/2017 4:54 PM, Miltich, Louise (COMM) wrote:

Carol,

As noted in our December 6, 2017 response to your Data Practices Act request of September 19, 2017, detailed curtailment data have been identified by Wisconsin Power and Light as confidential trade-secret data. The data were, therefore, not provided as part of the Department's December 6 response. We indicated in our December 6 response that Commerce had requested documentation from the company detailing the rationale for this claim and that Commerce would provide you with a "public" version of this information as soon as it is available. I am writing to provide these final pieces of information, which I believe will complete the response to your Data Practices Act request of September 19, 2017.

The Company has indicated that they are seeking trade protection under Section 13.37, subd. 1(b) of the Minnesota statutes for Energy Projection Data including energy production by the Bent Tree Wind Project, losses, and the net capacity factor resulting from such production as well as site-specific wind speed data. The company asserts that they have taken efforts that are reasonable under the circumstances to maintain the secrecy of the Energy Production Data, which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. In addition, the company asserts that a small number of people currently have knowledge of the Energy Production Data, which is not available from public sources, and WPL makes consistent efforts to maintain the confidentiality of the information. The Company has indicated that the Energy Production Data has substantial value to WPL, and would be of substantial value to WPL's competitors for various purposes. Should the Energy Production Data fall into the hands of WPL's competitors, they assert that it could be used to create a competitive disadvantage for WPL, resulting in higher costs to WPL's customers. Finally, WPL has noted that they submit similar energy production data for the Bent Tree Wind Project to the Commission in Docket No. ET6657/WS-08-57 on a quarterly basis with a request for trade secret protection.

I am attaching the "public" version of the relevant spreadsheets, although you will find that the only "public" portion of the data is the timestamp, so it offers no clearer indication of the periods of curtailment than the plots included in the *Bent Tree Wind Farm Post Construction Noise Assessment*, e-docket document id [201710-136370-01](#).

Please let me know if you have questions.

Thanks,
Louise

Louise I Miltich
Planner Principal
Minnesota Department of Commerce
85 7th Place East, Suite 280, Saint Paul, MN 55101
P: 651-539-1853
C: 651-470-1666



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"Our lives begin to end the day we become silent about the things that matter." Dr. Martin Luther King, Jr.

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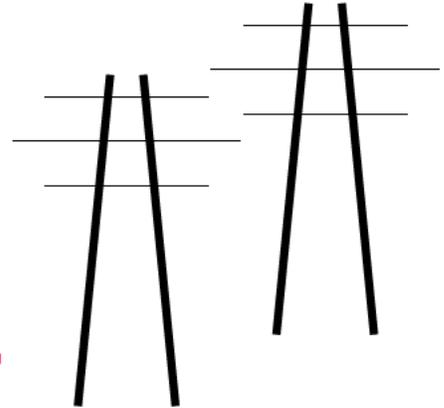


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Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



DATA PRACTICES ACT REQUEST

September 19, 2017

Louise I Miltich
Planner Principal
Minnesota Department of Commerce
85 7th Place East, Suite 280
Saint Paul, MN 55101

via email & eFile: louise.miltich@state.mn.us

RE: Data Practices Act Request – Sound Monitoring Data
Bent Tree Wind Project – PUC Docket 08-573

Dear Ms. Miltich:

It's my understanding that the sound monitors that were set for sound monitoring were removed in late June or July, ostensible due to curtailment, but it's now September and to Mr. Langrud's knowledge, they have not been replaced.

At this time, I make this Data Practices Act Request for raw data and reports from and regarding sound monitoring performed prior to removal of the monitors, and if replaced, to the present; curtailment data from the time monitors were placed until the time they were removed; emails and correspondence and notes from telephone conversations between DNV-GL and or other consultants and Commerce; and emails and correspondence and notes between Commerce and MPCA regarding wind turbine noise.

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

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law

cc: Dave Langrud
John Wachtler, Dept. of Commerce; Tricia DeBleeckere, PUC (via eFile & eServe)

From: Miltich, Louise (COMM)
Sent: Monday, January 08, 2018 10:18 AM
To: 'Carol A. Overland' <overland@legalectric.org>
Subject: RE: 9/19/17 Bent Tree Data Practices Act Request - Curtailment Information

Carol,
I've been working to get the BT wind study curtailment times in a form that I can share so that you can review the Bent Tree noise data with this information in hand. Take a look at the attached – this should be a big improvement over the previous “public” version, which I realize was not terribly helpful. Let me know if you have questions.
Thanks!

Louise I Miltich
Planner Principal
Minnesota Department of Commerce
85 7th Place East, Suite 280, Saint Paul, MN 55101
P: 651-539-1853
C: 651-470-1666



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From: Carol A. Overland [<mailto:overland@legalectric.org>]
Sent: Monday, December 18, 2017 6:13 PM
To: Miltich, Louise (COMM) <louise.miltich@state.mn.us>
Subject: Re: 9/19/17 Bent Tree Data Practices Act Request - Curtailment Information

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STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

SUITE 1800
445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

January 16, 2018

The Honorable LauraSue Schlatter and
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

**Re: 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
OAH 80-2500-34633; MPUC IP-6946/WS-17-410**

Dear Judge Schlatter:

Enclosed please find for filing the Minnesota Department Of Commerce, Energy
Environmental Review And Analysis (DOC EERA) Motion To Quash Subpoena.

Sincerely,

/s/ Linda S. Jensen

Linda S. Jensen
Assistant Attorney General
Atty. Reg. No. 0189030

445 Minnesota Street, Suite 1800
St. Paul, MN 55101-2134
Telephone: (651) 757-1472
Linda.S.Jensen@ag.state.mn.us

Attorney for Minnesota Department of Commerce,
Energy Environmental Review and Analysis

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Eknes	Bret	bret.eknes@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Gratz	Emerald	emerald.gratz@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
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Wolf	Daniel P	dan.wolf@state.mn.us	Public Utilities Commission	Electronic Service	Yes