

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR 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

**MINNESOTA DEPARTMENT OF
NATURAL RESOURCES' MOTION TO
QUASH A HEARING SUBPOENA FOR
LISA JOYAL AND, IN THE
ALTERNATIVE, OBJECTION TO
INTERVENOR'S HEARING SUBPOENA
FOR LISA JOYAL**

OAH Docket No. 80-2500-34633
MPUC IP-6946/WS-17-410

TO: Freeborn Wind Energy LLC, and its attorney, Christina Brusven, Fredrickson & Byron,
P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402; and

Intervenor Association of Freeborn County Landowners and its attorney, Carol A.
Overland, Legalectric, Inc., 1110 West Avenue, Red Wing, Minnesota 55066.

MOTION

Pursuant to Minnesota Rules 1400.7000, subp. 3, the Minnesota Department of Natural Resources ("DNR") respectfully moves this Court for an Order quashing the subpoena of DNR employee Lisa Joyal.

This motion is based upon DNR's Memorandum and the Affidavit of Lisa Joyal submitted herewith.

Should Intervenor Association of Freeborn County Landowners wish to contest the motion, it is required to file a written response with the Court and serve copies on opposing counsel within ten working days after receiving the motion. *See* Minn. R. 1400.6600.

OBJECTION

Pursuant to Minnesota Rules 1400.7000, subp. 3, DNR respectfully files its objection to the subpoena of DNR employee Lisa Joyal.

This objection is based upon DNR's Memorandum and the Affidavit of Lisa Joyal submitted herewith.

Pursuant to Minnesota Rules 1400.7000, subp. 3, the Administrative Law Judge "shall cancel or modify the subpoena if it is unreasonable or oppressive"

Dated: February 9, 2018.

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

/s/ Nur Ibrahim

NUR IBRAHIM

Assistant Attorney General

Atty. Reg. No. 0398397

445 Minnesota Street, Suite 900

St. Paul, Minnesota 55101-2127

(651) 757-1320 (Voice)

(651) 297-4139 (Fax)

nur.ibrahim@ag.state.mn.us

ATTORNEY FOR MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

STATE OF MINNESOTA
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FOR MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Freeborn
Wind Energy LLC for a Large Wind Energy
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**MEMORANDUM IN SUPPORT OF
MINNESOTA DEPARTMENT OF
NATURAL RESOURCES' MOTION TO
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INTERVENOR'S HEARING SUBPOENA
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OAH Docket No. 80-2500-34633
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INTRODUCTION

The Minnesota Department of Natural Resources (“DNR”) respectfully requests this Court grant its Motion to Quash the Hearing Subpoena (“Subpoena”) of DNR employee Lisa Joyal because: (i) the request requires a non-party public official to travel outside the county where she resides, works or conducts business; and (ii) the request fails to compensate the non-party witness.

FACTS

On December 5, 2017, upon the request of Intervenor Association of Freeborn County Landowners (“Intervenor”), Administrative Law Judge (“ALJ”) LauraSue Schlatter issued the Subpoena to Ms. Lisa Joyal, who is a DNR employee. On December 18, 2017, the Ramsey County Sheriff’s Office attempted to serve Ms. Joyal at DNR’s St. Paul office, located at 500 Lafayette Road, St. Paul, Minnesota 55155. Affidavit of Lisa Joyal (hereinafter “Joyal Aff.”), dated February 8, 2018, at ¶ 3, Ex. A. The Sheriff left a copy of the Subpoena with a legal

assistant. *Id.* at ¶ 3, Ex. B. Ms. Joyal is a resident of Anoka County, works in Ramsey County, and does not regularly conduct business elsewhere. *Id.* at ¶ 5.

The Subpoena commanded Ms. Joyal to appear at a venue yet to be determined in Freeborn County (Albert Lea) on Thursday, February 22, 2018, at 9:30 a.m. for the above-captioned matter. *Id.* at Ex. A. It is the understanding of DNR, that Intervenor seeks testimony from Ms. Joyal on the natural resource impacts of the siting related to this action. Ms. Joyal is aware of this project and had a limited role in its environmental review. *Id.* at ¶ 2.

ARGUMENT

Minnesota Rules 1405.1300, subpart 3 allows an ALJ to quash or modify a subpoena upon finding that it is “unreasonable or oppressive.” The Subpoena subjects Ms. Joyal, a state employee, to the undue and unnecessary burden of traveling to an out-state hearing, to serve as a witness for a private litigant, in a matter to which neither she nor DNR are parties.

I. THE SUBPOENA SHOULD BE QUASHED BECAUSE IT REQUIRES A NON-PARTY PUBLIC OFFICIAL TO TRAVEL OUTSIDE THE COUNTY WHERE SHE RESIDES, IS EMPLOYED OR REGULARLY TRANSACTS BUSINESS FOR NON-STATE BUSINESS.

This Subpoena requires a state employee to act as an uncompensated, expert witness for Intervenor. The Subpoena is unreasonable and oppressive because it subjects Ms. Joyal to the undue and unnecessary burden of traveling to an out-state hearing that is located in a county different than the counties where she resides and works. *See In re Disciplinary Action Against Coleman*, 793 N.W.2d 296, 303 (Minn. 2011) (finding that it was appropriate to quash a subpoena that required an individual to travel more than 100 miles to a hearing outside of the county where the individual worked, lived or transacted business). The Subpoena imposes an undue burden and expense on both Ms. Joyal and the State in an action where DNR is not a party.

Ms. Joyal will likely need to spend at least one day away from her place of business, traveling to this hearing on behalf of a private party. Ms. Joyal resides in Anoka County and will likely travel over 200 miles to this hearing on behalf of a private party. Joyal Aff. at ¶ 5. Minnesota Rules chapter 1400 is silent on what is considered an “unreasonable or oppressive” subpoena request. One may, however, look to the Minnesota Rules for Civil Procedure for guidance.¹ Minnesota Rules of Civil Procedure 45.03(c)(1)(B) indicates that a subpoena may be quashed if it “requires a person who is not a party or an officer of a party to travel to a place outside the county where that person resides, is employed or regularly transacts business in person.”

Moreover, the time and energy of public officials should be preserved for official state business. In *Ellingson & Assoc. Inc. v. Keefe*, 396 N.W.2d 694, 697–97 (Minn. Ct. App. 1986), the court found 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 sources of routine pre-trial discovery would result in a severe disruption of the government’s primary function.

(citing *Cnty. Fed. Savings & Loan v. Fed. Home Loan Bank*, 96 F.R.D. 619, 621 (D.D.C. 1983).) DNR will lose the services of one of its employees for an entire day for matters unrelated to Ms. Joyal’s duties. Allowing DNR’s employees to provide testimony for private parties without adequate compensation is unreasonable and oppressive. For these reasons, the Subpoena should be quashed.

¹ Minnesota Rules 1400.6600 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.”

II. THE SUBPOENA SHOULD BE QUASHED BECAUSE INTERVENOR FAILED TO ARRANGE FOR ADEQUATE COMPENSATION OF A NON-PARTY WITNESS.

DNR also requests that this Court quash the Subpoena due to Intervenor's failure to arrange for appropriate compensation of a non-party witness and failure to tender a statutorily-required witness fee and mileage reimbursement to Ms. Joyal.

Minnesota Rules of Civil Procedure 45.03(d) governs the compensation of certain non-party expert witnesses, such as Ms. Joyal:

a witness who is not a party to the action . . . who is required to give testimony . . . relating to a profession . . . or relating to knowledge, information, or facts obtained as a result of activities in such profession . . . is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony

Minn. R. Civ. P. 45.03(d). When a non-party witness is entitled to compensation under Rule 45.03(d), the party who issued the subpoena must arrange for reasonable compensation prior to the date the testimony is to be given. *Id.* As of February 8, 2018, Intervenor has not given any indication that it intends to compensate Ms. Joyal for her expenses.

Further, it would be improper for a DNR employee to be compelled to testify as a witness for the benefit of a non-state party in litigation not involving DNR.² Ms. Joyal had limited involvement in this matter and her role was only to provide her experience and knowledge on the environmental review as it related to the potential impacts to rare features. Joyal Aff. ¶¶ 1–2. Here, the interest of DNR in its employees being turned into involuntary experts for a private litigant outweighs the interest of Intervenor and require that Intervenor obtain this information elsewhere, through private consultants or other means less disruptive to Ms. Joyal and DNR.

² DNR will incur substantial expenses sending Ms. Joyal to Freeborn County, including travel expenses and the lost services of one of its employees. Such expenses, absent a showing of substantial need for the testimony or undue hardship, are grounds for granting a motion to quash. Minn. R. Civ. P. 45.03(c)(2)(C).

Furthermore, Intervenor failed to tender the required fees for Ms. Joyal's attendance and reimbursement for Ms. Joyal's mileage as required by law. *See* Minn. R. 1400.7000, subp. 2 (“[t]he cost of service, fees, and expense of any witnesses subpoenaed shall be paid by the party at whose request the witness appears”); *see also* Minn. R. Civ. P. 45.02(a) (“ . . . if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law”). DNR is not a party to this matter and its employees should not be utilized by private parties for free expert opinions. Therefore, DNR respectfully requests the Court quash Ms. Joyal's Subpoena.

CONCLUSION

For the reasons stated above, DNR respectfully requests that the Subpoena to compel the attendance and testimony of Lisa Joyal be quashed and/or canceled.

Dated: February 9, 2018.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

/s/ Nur Ibrahim

NUR IBRAHIM

Assistant Attorney General

Atty. Reg. No. 0398397

445 Minnesota Street, Suite 900

St. Paul, Minnesota 55101-2127

(651) 757-1320 (Voice)

(651) 297-4139 (Fax)

nur.ibrahim@ag.state.mn.us

ATTORNEY FOR MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.

Dated: February 9, 2018.

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

/s/ Nur Ibrahim

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ATTORNEY FOR MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

STATE OF MINNESOTA
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

AFFIDAVIT OF LISA JOYAL

OAH DOCKET NO. 80-2500-34633

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

1. I am employed at the Minnesota Department of Natural Resources (“DNR”) as the Endangered Species Review Coordinator in DNR’s St. Paul Office in Ramsey County Minnesota. I have held this position from 2004 to the present. Among my duties for DNR, I am responsible for reviewing development projects for potential impacts to rare features.

2. I have no personal knowledge of the facts at issue in the Office of Administrative Hearings (“OAH”) Docket No. 80-2500-34633. In my role at DNR, I am aware of this project and have had a limited role in its environmental review.

3. Intervenor Association of Freeborn County Landowners (“Intervenor”) served me with a Hearing Subpoena (“Subpoena”) to appear in Freeborn County on Thursday, February 22, 2018, at 9:30 a.m. as a witness in a hearing for OAH Docket No. 80-2500-34633. A true and correct copy of the Subpoena is attached hereto as Exhibit A. I was served by a Ramsey County Sheriff on December 18, 2017, at DNR’s St. Paul office. Notice was left with a legal assistant. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit B.

4. As of February 8, 2018, Intervenor has not contacted me to arrange to pay fees for attending the hearing scheduled for February 22, 2018 or travel to and from the hearing at the statutory rate of .28 cents per mile. Minn. Stat. § 357.22

5. I am a resident of Anoka County and am employed in Ramsey County. I do not regularly conduct business elsewhere in the state. I anticipate the mileage to and from this hearing to be over 220 miles, which is at least a \$61.60 expense.

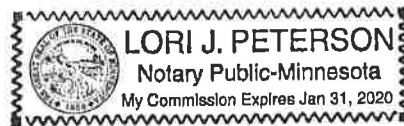
6. Likewise, as of February 8, 2018, Intervenor has not contacted me to arrange for any expert witness fees. At this point, Intervenor has not provided any indication of its intent to provide any reasonable compensation for my time.

FURTHER YOUR AFFIANT SAYETH NOT.

Lisa Joyal
LISA JOYAL

Subscribed and sworn to before me on
this 8th day of February, 2018.

Lori J. Peterson
Notary Public



RAMSEY COUNTY SHERIFF'S OFFICE

Return # 21408
Process # C2017008934
Docket #
Reference #

STATE OF MINNESOTA
COUNTY OF RAMSEY

CAROL A. OVERLAND, FOR INTERVENOR
AECI 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 Serler
Ramsey County Sheriff
By: Deputy Ying Yang
425 GROVE ST
ST PAUL, MN 55101
Phone: (651) 266-9330

RECEIVED
DEC 13 2017



HEARING SUBPOENA

TO: Lisa Joyal, National Heritage Data Nongame Program, Department of Natural Resources, 261 Highway 15 South, New Ulm, MN 56073

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

You are commanded to appear before Administrative Law Judge LauraSue 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 Legalethic

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR 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
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**MINNESOTA DEPARTMENT OF
NATURAL RESOURCES' MOTION TO
QUASH A HEARING SUBPOENA FOR
KEVIN MIXSON AND, IN THE
ALTERNATIVE, OBJECTION TO
INTERVENOR'S HEARING SUBPOENA
FOR KEVIN MIXON**

OAH Docket No. 80-2500-34633
MPUC IP-6946/WS-17-410

TO: Freeborn Wind Energy LLC, and its attorney, Christina Brusven, Fredrickson & Byron,
P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402; and

Intervenor Association of Freeborn County Landowners and its attorney, Carol A.
Overland, Legalectric, Inc., 1110 West Avenue, Red Wing, Minnesota 55066.

MOTION

Pursuant to Minnesota Rules 1400.7000, subp. 3, the Minnesota Department of Natural Resources ("DNR") respectfully moves this Court for an Order quashing the subpoena of DNR employee Kevin Mixson.

This motion is based upon DNR's Memorandum and the Affidavit of Kevin Mixson submitted herewith.

Should Intervenor Association of Freeborn County Landowners wish to contest the motion, it is required to file a written response with the Court and serve copies on opposing counsel within ten working days after receiving the motion. *See* Minn. R. 1400.6600.

OBJECTION

Pursuant to Minnesota Rules 1400.7000, subp. 3, DNR respectfully files its objection to the subpoena of DNR employee Kevin Mixson.

This objection is based upon DNR's Memorandum and the Affidavit of Kevin Mixson submitted herewith.

Pursuant to Minnesota Rules 1400.7000, subp. 3, the Administrative Law Judge "shall cancel or modify the subpoena if it is unreasonable or oppressive"

Dated: February 9, 2018.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

/s/ Nur Ibrahim

NUR IBRAHIM

Assistant Attorney General

Atty. Reg. No. 0398397

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ATTORNEY FOR MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR MINNESOTA DEPARTMENT OF PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Freeborn
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**MEMORANDUM IN SUPPORT OF
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OAH Docket No. 80-2500-34633
MPUC IP-6946/ WS-17-410

INTRODUCTION

The Minnesota Department of Natural Resources (“DNR”) respectfully request this Court grant its Motion to Quash the Hearing Subpoena (“Subpoena”) of DNR employee Kevin Mixon because: (i) the request requires a non-party public official to travel outside the county where he resides, works or conducts business; and (ii) the request fails to compensate the non-party witness.

FACTS

On December 5, 2017, upon the request of Intervenor Association of Freeborn County Landowners (“Intervenor”), Administrative Law Judge (“ALJ”) LauraSue Schlatter issued the Subpoena to Mr. Kevin Mixon, who is a DNR employee. Affidavit of Kevin Mixon (hereinafter “Mixon Aff.”), dated February 8, 2018, at ¶ 3 and Ex. A. On December 11, 2017, the Brown County Sheriff’s Office served DNR employee Kevin Mixon by leaving a copy of the Subpoena with a receptionist at DNR’s New Ulm Office, located at 21371 Hwy 15 S, New Ulm, Minnesota

56073. *Id.* at ¶ 3, Ex. B. Mr. Mixon is also a resident of Brown County, and does not regularly conduct business elsewhere. *Id.* at ¶ 5.

The Subpoena commanded Mr. Mixon to appear at a venue yet to be determined in Freeborn County (Albert Lea), on Thursday, February 22, 2018, at 9:30 a.m. for the above-captioned matter. *Id.* at ¶ 3, Ex. A. It is the understanding of DNR, that Intervenor seeks testimony from Mr. Mixon on the natural resource impacts of the siting related to this action. Mr. Mixon's involvement in the project included discussions pertaining to the natural resource issues, such as the appropriate wildlife surveys for the project. *Id.* at ¶ 2.

ARGUMENT

Minnesota Rules 1405.1300, subpart 3 allows an ALJ to quash or modify a subpoena upon a finding that it "unreasonable or oppressive." The Subpoena subjects Mr. Mixon, a state employee, to the undue and unnecessary burden of traveling to a county outside of where he resides or works, to serve as a witness for a private litigant, in a matter to which neither he nor DNR are parties.

I. THE SUBPOENA SHOULD BE QUASHED BECAUSE IT REQUIRES A NON-PARTY PUBLIC OFFICIAL TO TRAVEL OUTSIDE THE COUNTY WHERE HE RESIDES, IS EMPLOYED OR REGULARLY TRANSACTS BUSINESS FOR NON-STATE BUSINESS.

This Subpoena requires a state employee to act as an uncompensated witness for Intervenor. The Subpoena is unreasonable and oppressive because it subjects Mr. Mixon to the undue burden of traveling to a distant location that is located in a county different than the counties where he resides and works. *See In re Disciplinary Action Against Coleman*, 793 N.W.2d 296, 303 (Minn. 2011) (finding that it was appropriate to quash a subpoena that required an individual to travel more than 100 miles to a hearing outside of the county where the individual worked, lived or transacted business). The Subpoena imposes undue burden and expense on both Mr. Mixon and the State in an action where DNR is not a party.

Mr. Mixon will likely need to spend at least one day away from his place of business, traveling to this hearing on behalf of a private party. Mr. Mixon resides in Brown County and will need to travel approximately 200 miles roundtrip to attend. Mixon Aff. at ¶ 5. Minnesota Rules chapter 1400 is silent on what is considered an “unreasonable or oppressive” subpoena request. One may, however, look to the Minnesota Rules for Civil Procedure for guidance.¹ Minnesota Rule of Civil Procedure 45.03(c)(1)(B) indicates that a subpoena may be quashed if it “requires a person who is not a party or an officer of a party to travel to a place outside the county where that person resides, is employed or regularly transacts business in person.”

Moreover, the time and energy of public officials should be preserved for official state business. In *Ellingson & Assoc. Inc. v. Keefe*, 396 N.W.2d 694, 697–97 (Minn. Ct. App. 1986), 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 sources of routine pre-trial discovery would result in a severe disruption of the government’s primary function.

(citing *Cnty. Fed. Savings & Loan v. Fed. Home Loan Bank*, 96 F.R.D. 619, 621 (D.D.C. 1983).) DNR will lose the services of one of its employees for an entire day for matters unrelated to Mr. Mixson’s duties. Allowing DNR’s employees to provide testimony for private parties without adequate compensation is unreasonable and oppressive. For these reasons, the Subpoena should be quashed.

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DNR also requests that this Court quash the Subpoena due to Intervenor's failure to arrange for appropriate compensation of a non-party witness and failure to tender a statutorily-required witness fee and mileage reimbursement to Mr. Mixon.

Minnesota Rules of Civil Procedure 45.03(d) governs the compensation of certain non-party expert witnesses, such as Mr. Mixon:

a witness who is not a party to the action . . . who is required to give testimony . . . relating to a profession . . . or relating to knowledge, information, or facts obtained as a result of activities in such profession . . . is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony

Minn. R. Civ. P. 45.03(d). When a non-party witness is entitled to compensation under Rule 45.03(d), the party who issued the subpoena must arrange for reasonable compensation prior to the date the testimony is to be given. *Id.* As of February 8, 2018, Intervenor has not given any indication that it intends to compensate Mr. Mixon for his expenses.

Further, it would be improper for a DNR employee to be compelled to testify as a witness for the benefit of a non-state party in litigation not involving DNR.² Mr. Mixon had limited involvement in this matter and his role was only to provide his experience and knowledge on the appropriate wildlife surveys for the project area. *See* Mixon Aff. ¶ 2. Here, the interest of DNR in its employees being turned into involuntary experts for a private litigant outweighs the interest of Intervenor and require that Intervenor obtain this information elsewhere, through private consultants or other means less disruptive to Mr. Mixon and DNR.

² DNR will incur substantial expenses sending Mr. Mixon to Freeborn County, including travel expenses and the lost services of one of its employees. Such expenses, absent a showing of substantial need for the testimony or undue hardship, are grounds for granting a motion to quash. Minn. R. Civ. P. 45.03(c)(2)(C).

Furthermore, Intervenor failed to tender the required fees for Mr. Mixson's attendance and reimbursement for Mr. Mixson's mileage as required by law. *See* Minn. R. 1400.7000, subp. 2 (“[t]he cost of service, fees, and expense of any witnesses subpoenaed shall be paid by the party at whose request the witness appears”); *see also* Minn. R. Civ. P. 45.02(a) (“ . . . if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law”). DNR is not a party to this matter and its employees should not be utilized by private parties for free expert opinions. Therefore, DNR respectfully requests the Court quash Mr. Mixson's Subpoena.

CONCLUSION

For the reasons stated above, DNR respectfully requests that the Subpoena to compel the attendance and testimony of Kevin Mixson be quashed and/or canceled.

Dated: February 9, 2018.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

/s/ Nur Ibrahim

NUR IBRAHIM

Assistant Attorney General

Atty. Reg. No. 0398397

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St. Paul, Minnesota 55101-2127

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ATTORNEY FOR MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.

Dated: February 9, 2018.

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

/s/ Nur Ibrahim

NUR IBRAHIM

Assistant Attorney General

Atty. Reg. No. 0398397

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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

AFFIDAVIT OF KEVIN MIXON

OAH DOCKET NO. 80-2500-34633

STATE OF MINNESOTA)
) ss.
COUNTY OF BROWN)

Kevin Mixon, being first duly sworn on oath, hereby deposes and states the following:

1. I am employed at the Minnesota Department of Natural Resources (“DNR”) as a Regional Environmental Assessment Ecologist in the Ecological and Water Resources Division. I work out of DNR’s New Ulm Office. I have held this position from 2009 to the present. Among my duties for DNR, I am responsible for environmental review within the Ecological and Water Resources Division.

2. I have no personal knowledge of the facts at issue in the Office of Administrative Hearings (“OAH”) Docket No. 80-2500-34633 as Counsel for Intervenor Association of Freeborn County Landowners (“Intervenor”) has not been in touch to inform me of the purpose of my testimony. In my role at DNR, I have discussed the project with the developers and consultants in regards to natural resource issues, such as the appropriate wildlife surveys for the project.

3. Intervenor served me with a Hearing Subpoena (“Subpoena”) to appear in Freeborn County on Thursday, February 22, 2018, at 9:30 a.m. as a witness in a hearing for OAH Docket No. 80-2500-34633. A true and correct copy of the Subpoena is attached hereto as

Exhibit A. I was served by a Brown County Sheriff on December 11, 2017, at DNR's New Ulm office. Notice was left with a receptionist. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit B.

4. As of February 8, 2018, Intervenor has not contacted me to arrange to pay fees for attending the hearing scheduled for February 22, 2018 or travel to and from the hearing at the statutory rate of .28 cents per mile. Minn. Stat. § 357.22

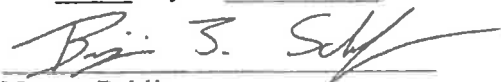
5. I reside and am employed in Brown County. I do not regularly conduct business elsewhere in the state. I anticipate the mileage to Brown County to be approximately 200 miles, which will cost a minimum of \$56.56 in mileage.

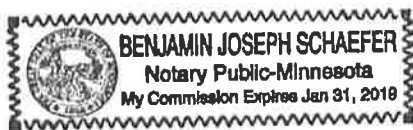
6. Likewise, as of February 8, 2018, Intervenor has not contacted me to arrange for any expert witness fees. At this point, Intervenor has not provided any indication of its intent to provide any reasonable compensation for my time.

FURTHER YOUR AFFIANT SAYETH NOT.


KEVIN MIXON

Subscribed and sworn to before me on
this 8TH day of FEBRUARY, 2018.


Notary Public





HEARING SUBPOENA

TO: Kevin Mixon, Regional Environmental Assessment Ecologist, Division of Ecological and Water Resources, 21371 Highway 15 South, New Ulm, MN 56073

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

You are commanded to appear before Administrative Law Judge LauraSue 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

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

LAURASUE SCHLATTER
Administrative Law Judge

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

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		
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):

Person unknown at address No such address Service cancelled by litigant
 No response Person moved, address unknown
Other _____

Sheriff's Fee \$ _____
Travel \$ _____
Total \$ _____

Rich Haffmann
Sheriff of Brown County

By  Deputy Randeec Murphy

Date: 12/11/17