

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.

**MEMORANDUM IN SUPPORT OF  
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

**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.<sup>1</sup> 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.

---

<sup>1</sup> 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.<sup>2</sup> 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.

---

<sup>2</sup> 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

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](mailto:nur.ibrahim@ag.state.mn.us)

ATTORNEY FOR MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES