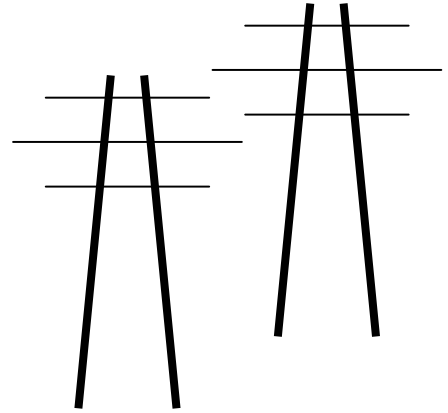


Legalelectric, Inc.

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



February 12, 2018

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

via eFiling and US mail

RE: AFCL Response to DNR Motions to Quash
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 Response to DNR Motion to Quash Subpoenas of Joyal and Mixon. A hard copy will follow by US mail as directed in the Prehearing Order.

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

Very truly yours,

Carol A. Overland
Attorney at Law

cc: DNR's Asst. A.G. Nur Ibrahim via email: nur.ibrahim@ag.state.mn.us
Parties served via eFiling and eService
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 eFiled the attached AFCL find Response to DNR Motion to Quash Subpoenas of Joyal and Mixon and have eServed parties via eDockets, and DNR's Asst. A.G. Nur Ibrahim via email, nur.ibrahim@ag.state.mn.us.



February 12, 2018

Carol A. Overland MN #254617
Attorney for Association of Freeborn
County Landowners
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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 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
OAH Docket: 80-2500-34633**

ASSOCIATION OF FREEBORN COUNTY LANDOWNERS

RESPONSE TO DNR MOTIONS TO QUASH SUBPOENAS OF MIXON AND JOYAL

The Association of Freeborn County Landowners offers this response to the Department of Natural Resources' Motions to Quash the Mixon and Joyal subpoenas. The DNR's Motion is untimely and contrary to the agreement with DNR Legal Counsel. Further the subpoenas are not unreasonable and oppressive, unless expecting the DNR to do its job is unreasonable and oppressive. Both DNR Motions to Quash should be denied.

FACTS

The mission of the Minnesota Department of Natural Resources (DNR) is to work with citizens to conserve and manage the state's natural resources, to provide outdoor recreation opportunities, and to provide for commercial uses of natural resources in a way that creates a sustainable quality of life.¹

In addition to the facts presented by DNR, the following facts were omitted and should be included for consideration regarding these Motions:

¹DNR Mission, online at: <http://www.dnr.state.mn.us/aboutdnr/mission.html>

- DNR staff Kevin Mixon and Lisa Joyal submitted Comment letters to the Freeborn Wind applicants that were not addressed in their Affidavits. It was because of their signatures on these Comments that they were Subpoenaed. Attachment A, Application, Appendix A, Agency Correspondence, pps. 3-7, 10-17, 77-78 ([20176-132804-03](#)). A DNR Comment was filed October 6, 2017, which addresses issues different than those raised by Mixon and Joyal. Attachment B, DNR Comments on Draft Site Permit, October 6, 2017 ([201710-136200-01](#)).
- On January 30, 2018, I received a telephone call from Sherry Enzler, Legal Counsel for DNR.
- I initially brought up background information on prior Subpoenas served to DNR to elicit DNR testimony regarding Comments filed, and Jamie Schrenzel's participation in many siting, routing and PPSA Annual Hearings.
- I brought up the DNR Comments on file in this docket, about which AFCL is seeking testimony, and Ms. Enzler asked whether we were seeking foundation for those Comments and I agreed and that AFCL is interested in foundation and follow up on those Comments.
- Ms. Enzler's primary concern was that the DNR personnel not "sit around all day" and we agreed that establishing a time certain would prevent that from happening, and agreed on 3 p.m., which would need scheduling approval.
- Ms. Enzler also repeatedly referred to a Motion to Quash and that she "would comply with the judge's order." I informed her that there was no DNR Motion to Quash pending, she stated that she had seen one, referring to another agency's Motion, and admitted that there was no DNR Motion. I attempted to explain the status of subpoenas, that there was a Commerce Motion which had been withdrawn, and that an Agreement with Dept. of Health was pending, but she ended the conversation.
- Ms. Enzler did not raise compensation issues nor did she raise concern about DNR employees traveling the distance to Albert Lea – her only stated concern was that the employees not be tied up all day. That was accommodated by agreeing that we would establish a time certain so to limit staff time at the hearing.
- AFCL will compensate the appropriate party for expenses of witnesses who testify – however it is odd that DNR should be paid by intervening parties to do their job of informing the record and explaining and defending comments. This has never been required in the many dockets I've been involved in where the DNR has testified.
- I memorialized our discussion and agreement on arranging a time certain in a letter to the ALJ, with notice that there was to be a Prehearing Conference where this would be discussed, and copied Ms. Enzler. Attachment C, Letter to ALJ.

- In an email to Ms. Enzler, to which the letter to ALJ was attached, I explained in writing the status of the Commerce Motion to Quash and agreement and withdrawal; the Dept. of Health agreement and that no Motion to Quash was filed, and that there was no pending Motion that affected the DNR Subpoenas. Attachment D, email to Ms. Enzler and letter to ALJ.
- On February 7, 2018, a Prehearing Conference was held, and the time certain for the DNR was set at 10:00 a.m., February 22, 2018. The written order is pending.
- On February 9, 2018, the Motion to Quash Subpoenas of Mixon and Joyal was filed, 8 weeks after service of the Mixon subpoena, and 7 weeks after service of the Joyal subpoena, and 10 days after the discussion with Ms. Enzler and agreement that a time certain would satisfy her concerns.

Affidavit of Overland, attached.

ARGUMENT

As DNR argues, Minnesota Rules 1405.1300, subpart 3 allows an ALJ to quash or modify a subpoena upon a finding that it is “unreasonable or oppressive.” This is neither. Further, it has been modified, establishing a date certain, a modification agreed to by DNR’s Legal Counsel. The DNR Motions are untimely, and if this court determines that it is necessary for AFCL to compensate the DNR for doing its work in this siting docket, AFCL objects to compensation for the DNR for time and expense of testifying because that is the job of the DNR.

I. MOTION SHOULD BE DENIED BECAUSE DNR’s GENERAL COUNSEL AGREED TO TESTIMONY AT TIME CERTAIN

The Motion to Quash should be denied because the DNR’s General Counsel Sherry Enzler contacted AFCL counsel, raised the issue of not wanting DNR staff to “sit around all day” at the hearing, and agreed to set a time certain for testimony. After that agreement, confirmed with a letter and email, DNR’s counsel had no contact, no request to modify that agreement, and no notice of intent to terminate that agreement. Ten days after the agreement to DNR testimony at time certain, AFCL counsel was served with Motion to Quash Subpoenas.

The DNR should fulfill the agreement for testimony at time certain on February 22, 2018.

II. DNR STAFF WROTE COMMENTS AND PARTICIPATED IN DISCUSSIONS AND CORRESPONDENCE REGARDING THE FREEBORN PROJECT. TESTIFYING IN THIS HEARING IS APPROPRIATE AND REASONABLE, THE JOB AND MISSION OF THE DNR IS NOT UNREASONABLE AND OPPRESSIVE.

Part of the Department of Natural Resources charge is to review applications and make comments to assure that our natural resources are protected. That is the mission of the agency, and the specific job of Mixon and Joyal AND/or a Principal Planner.

The mission of the Minnesota Department of Natural Resources (DNR) is to work with citizens to conserve and manage the state's natural resources, to provide outdoor recreation opportunities, and to provide for commercial uses of natural resources in a way that creates a sustainable quality of life.²

Comments on a project and testimony in a project hearing is normal and reasonable – it is unreasonable for the DNR to claim that doing its job is “unreasonable and oppressive.”

In previous Commission dockets, DNR Commentor Jamie Schrenzel routinely participated in public and evidentiary hearings to assure that the DNR perspective was part of the hearing record, and eFiled comments and testified so that those comments were entered as evidence. For example, MnDOT’s Dave Seykora and Stacy Koch have also filed routing and siting comments, attend siting and routing hearings, and testify regarding the DOT comments. Years ago, in the CapX 2020 transmission dockets, as in this docket, agency testimony was missing, and was spurred by Subpoenas. Where there was a commitment to testify, the subpoena was withdrawn. Testimony was then provided as a matter of course in the dockets that followed. Agency staff became accustomed to participating, learned to file comments in the Commission dockets, and were present at hearings as a matter of course. Typically, agency witnesses appeared after intervenors and before Commerce. Given the obstructive response of the DNR, it appears the DNR will not testify but for the subpoenas, that the DNR testimony can not be

²DNR Mission, online at: <http://www.dnr.state.mn.us/aboutdnr/mission.html>

presumed to occur, and that is a procedural problem.

The DNR claims that DNR testimony in the evidentiary hearing would be “for the benefit of a non-state party in litigation not involving the DNR.” DNR Motion Memorandum, Mixon and Joyal, p. 4. The DNR’s testimony is a public benefit, with the DNR testifying regarding the comments made in its review of the project, with those comments benefitting the environment, wildlife, water, wetlands, etc., and not AFCL, and the DNR is involved as the DNR is the agency making the DNR comments, meeting with applicants, and providing review and analysis. That is the DNR’s job.

The DNR claims that, “DNR will lose the services of one of its employees for an entire day for matters unrelated to Mr. Mixon’s/Ms. Joyal’s duties.” DNR Motion Memorandum, Mixon p. 3; DNR Motion Memorandum, Joyal, p. 3. As above, a time certain was agreed to and has been arranged. But the argument preceding that quote is bizarre:

Moreover, the time and energy of public officials should be preserved for official state business.

DNR Motion Memorandum, Mixon p. 3; DNR Motion Memorandum, Joyal, p. 3.³ The DNR Mission specifies that the DNR is to work with citizens. This subpoena is for entry of the DNR Comments and brief testimony regarding those comments in the OAH evidentiary hearing record for a wind siting project in a Public Utilities Commission docket, something that the DNR should do as a matter of course. This is the job of the DNR. It is official state business. Why does it require a subpoena to secure testimony that should be voluntary as a matter of course?

The DNR’s Jamie Schrenzel was the one who testified in many dockets on behalf of the DNR regarding comments on specific projects, however, Ms. Schrenzel is no longer with the

³ Note the case cited, *Ellingson & Assoc. Inc. v. Keefe*, 396 N.W. 2d 694, 697 (Minn. Ct. App. 1986) is regarding pre-trial discovery, and not testimony, and it is a private case, not a Public Utilities Commission docket in which the DNR has a clear role.

DNR. For this reason, to secure agency participation, AFCL requested and received Subpoenas, likewise for Dept. of Health and Dept. of Commerce.

If there is a DNR employee more suited to testifying at a hearing, someone in the role once filled by Jamie Schrenzel, and perhaps this is the role of Cynthia Warzecha, DNR Principal Planner, the AFCL would gladly withdraw the subpoenas if there is a commitment in writing for the person charged with commenting to appear and testify, naming the DNR employee who is qualified to testify regarding DNR comments, and that such testimony commitment be confirmed in writing by that person. At this time, AFCL is understandably leery of “agreements” with the DNR to testify.

III. THE DNR’S MOTIONS SHOULD BE DENIED AS UNTIMELY

Motions to quash should be made promptly... Minn. R. 1405.1300. Although these Motions were made prior to the time specified in the subpoena, it’s too late.

The DNR’s Motions are untimely, late, because they were filed 7 and 8 weeks after the subpoenas were served. More importantly, the DNR Motions were filed 10 days after the DNR agreed to testimony at a time certain on February 22, 2018. That’s unacceptable.

IV. AFCL SHOULD NOT HAVE REIMBURSE DNR TO SECURE TESTIMONY

There has been no “ask” by the DNR. Travel time and expense was not raised as an issue by Ms. Enzler. Compensation was not raised or requested by Ms. Enzler, and compensation has not been requested in the Motion, only an assertion of failure to arrange compensation, that AFCL “has not given any indication that it intends to compensate Ms. Joyal/Mr. Mixon for her/his expenses.” DNR Motion Memo p. 4. However, testimony of state agencies regarding comments filed by that state agency to inform the evidentiary hearing record in a Public Utilities Commission docket is part of the DNR’s charge, and there is nothing fair and expeditious about

allowing the DNR to renege on its responsibilities to weigh in on a siting matter. As a matter of policy, AFCL finds it absurd that an intervenor should have to subpoena a state agency to weigh in, that the state agency isn't at the ready to address issues within its purview, and as absurd that the public should pay the DNR to do its job – that's what our state taxes are for. Yes, travel takes time, but travel is not necessary. If travelling to do the job is such a problem, then testimony can be provided by phone, as it is with other witnesses.

V. THE DNR's MOTIONS TO QUASH SHOULD BE DENIED.

The Association of Freeborn County Landowners requests that the DNR's Motions to Quash be denied. The DNR's Motion is untimely and contrary to the agreement with DNR Legal Counsel. Further the subpoenas are not unreasonable and oppressive, unless expecting the DNR to do its job is unreasonable and oppressive. That an intervenor must go to this length to secure agency comments and testimony in the evidentiary hearing record is more of a problem – AFCL is doing what is necessary to assure those comments and testimony regarding those comments informs the record.

February 12, 2018



Carol A. Overland MN #254617
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County Landowners
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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

**AFFIDAVIT OF CAROL A. OVERLAND, AFCL COUNSEL,
IN SUPPORT OF RESPONSE TO
DNR's MOTIONS TO QUASH SUBPOENAS OF MIXON AND JOYAL**

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

I, Carol A. Overland, upon affirmation, states and deposes as follows:

1. I am an attorney licensed in good standing in the State of Minnesota, Lic. No. 254617.
2. I am representing Association of Freeborn County Landowners in the above-captioned docket.
3. DNR staff Kevin Mixon and Lisa Joyal submitted Comment letters to the Freeborn Wind applicants, and from their affidavits and Applicant's meeting notes in the application, they also participated in discussions and email correspondence. Attached as Attachment A is a true and correct copy of Application, Appendix A, Agency Correspondence, pps. 3-7, 10-17, 77-78 (20176-132804-03) and Attachment B, DNR Comments on Draft Site Permit, October 6, 2017 (201710-136200-01). The Agency Correspondence materials are part of the application, and hence, part of the hearing record. However, the October

6, 2017 DNR comments were to Commerce regarding the Draft Site Permit and are not part of the hearing record.¹

4. On January 30, 2018, at 11:25 a.m., I received a telephone call from Sherry Enzler, General Counsel for DNR.
5. Ms. Enzler wanted to discuss the Subpoenas for DNR staff. I initially brought up background information on prior Subpoenas served to DNR to elicit DNR testimony regarding Comments filed, and noted that after becoming familiar with the siting/routing process, the DNR's Jamie Schrenzel's provided comments informing the record and explaining DNR comments in many siting, routing and PPSA Annual Hearings. Ms. Schrenzel attended hearings and testified as a matter of course as Principal Planner for the DNR, and a subpoena was not necessary after the first one in a CapX 2020 transmission routing docket.² Ms. Enzler confirmed that Jamie Schrenzel is no longer with the DNR.
6. I am not sure if Ms. Schrenzel has a replacement who is handling her Comment duties. Cynthia Warzecha, Principal Planner, did testify at this year's Power Plant Siting Act Hearing for the DNR, and it is possible that Cynthia Warzecha is her replacement. The PPSA Annual Hearing was December 22, 2017, after the DNR Subpoenas were requested and served, and that is when I first became aware that Cynthia Warzecha was commenting for the DNR.
7. I brought up the DNR Comments on file in this docket, about which AFCL is seeking testimony, and Ms. Enzler asked whether we were seeking foundation for those Comments and I confirmed that AFCL is interested in foundation and follow up on those Comments.
8. Ms. Enzler's stated concern was that the DNR personnel not "sit around all day" and we agreed that establishing a time certain would prevent that from happening, and agreed on 3 p.m., which would need scheduling approval.
9. Ms. Enzler also repeatedly referred to a Motion to Quash and that she "would comply with the judge's order." I informed her that there was no DNR Motion to Quash pending, she stated that she had seen one, apparently referring to another agency's Motion, and she admitted that there was no DNR Motion.
10. Ms. Enzler did not raise compensation issues nor did she raise concern about DNR employees traveling the distance to Albert Lea out of "their area" – her only stated concern was that the employees not be tied up all day sitting in a hearing. I proposed that

¹ Similarly, the October 4, 2017 MPCA comment to Commerce was not filed in eDockets on February 7, 2018, and is not yet part of the hearing record.

² See e.g. DNR response to CapX 2020 Brookings subpoena, noting DNR's Jamie Schrenzel was planning to attend hearing. <https://nocapx2020.info/wp-content/uploads/2010/09/brookingsltrtojudge.pdf>; See also No CapX 2020 response and withdrawal of subpoena. <https://nocapx2020.info/wp-content/uploads/2010/09/response2dnr.pdf>

we establish a time certain to address her concern, and she agreed to that and we agreed on 3 p.m.

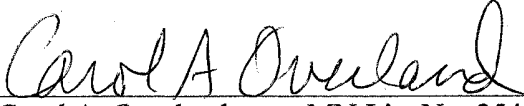
11. Ms.ENZler then again began to talk about complying with the judge's order. There was no Motion outstanding that would have any impact on the DNR Subpoena. It appeared she was not aware of the status of the Commerce and Dept. of Health Subpoenas and agreements, and I began to explain that there was a Commerce Motion which had been withdrawn, and that an Agreement with Dept. of Health was pending, but she abruptly ended the conversation saying she had a meeting.
12. AFCL will compensate agency staff witnesses as required – there was no ask or proposal or concern raised. AFCL did not send a blank check with the subpoena. It should be clarified whether DNR is also paying them their hourly rate and whether their mileage is expensed to DNR and what party should be compensated, the witness or the DNR. AFCL will compensate the appropriate party for expenses of witnesses who testify.
13. Ms.ENZler's call was long after the Subpoenas had been served, and her abrupt demeanor, and her repeated statements that the DNR would "comply with the judge's order" when none was pending regarding the DNR lead me to believe that she was not familiar with the status of the subpoenas. She ended the call very quickly as I was attempting to provide an update on Commerce and Dept. of Health subpoenas and agreements. That concerned me. I memorialized our discussion and agreement on arranging a time certain in a letter to the ALJ, asking that the matter be added to the agenda for the February 7, 2018 Prehearing Conference, and copied Ms.ENZler via email as she is not on the Freeborn Wind service list. Attached as Attachment C is a true and correct copy of the January 30, 2018 letter to Judge Schlatter (20181-139546-01).
14. In an email to Ms.ENZler on that same day, the letter to the ALJ regarding our agreement and request that the time certain be added to the Prehearing Conference agenda was attached. In the email, I gave a brief update of the status of the Commerce Motion to Quash, agreement and withdrawal of the Motion to Quash; the Dept. of Health agreement and that no Motion to Quash had been filed by MDH; and that there was no pending Motion that affected the DNR Subpoenas. Attached is Attachment D is a true and correct copy of the email that I sent to Ms.ENZler,
15. Ms.ENZler made no further contact with me after her January 30, 2018 telephone call and my email that same day.
16. On February 7, 2018, a Prehearing Conference was held, and rather than the 3 p.m. proposed, the time certain for the DNR witnesses was set at 10:00 a.m., February 22, 2018. Ms.ENZler had notice of the February 7, 2018 Prehearing Conference in my letter of January 30, 2017. It is my belief that she did not participate. The written order is pending. In our January 30, 2018 discussion, Ms.ENZler repeatedly stated that the DNR would "comply with the judge's order."

17. On February 9, 2018, the DNR's Motions to Quash were served -- 8 weeks after service of the Mixon subpoena, 7 weeks after service of the Joyal subpoena, and more importantly, 10 days after the discussion with Ms. Enzler and our agreement that the DNR witnesses would appear at a time certain, and that would satisfy her stated concerns.

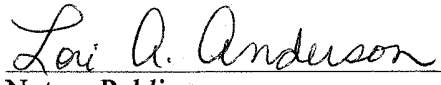
18. As in the CapX 2020 routing dockets, counsel for AFCL would gladly withdraw the subpoenas if there is a commitment to DNR testimony by staff with knowledge of comments to the Applicants and to Commerce in the hearing record. See, e.g., Attachments A and B.

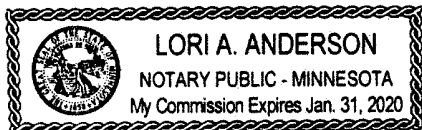
Further your affiant sayeth naught.

^{Ch}
Dated: February 11, 2018


Carol A. Overland MN Lic. No. 254617
Legalelectric
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

^{Ch} Signed and sworn to before me this
12th day of February, 2018


Notary Public



DNR COMMENTS AND APPLICANT MEETING NOTES

Freeborn Application, Appendix A, Agency Correspondence

Pps. 3-7, 10-17, 77-78

<u>20176-132804-03</u>	PUBLIC	17-410	FREEBORN WIND ENERGY LLC	INITIAL FILING-- APPENDIX A - AGENCY CORRESPONDENCE	06/15/2017
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MINNESOTA DEPARTMENT OF NATURAL RESOURCES

Division of Ecological and Water Resources

261 Highway 15 South, New Ulm, MN 56073

Phone: 507-359-6073 Email: kevin.mixon@state.mn.us

March 18, 2015

Ms. Andrea Giampoli
Invenergy LLC
One South Wacker Drive, Suite 1900
Chicago, IL 60606

Subject: Freeborn Large Wind Energy Conversion System
DNR Preliminary Review
Freeborn County, MN

Dear Ms. Giampoli:

The Minnesota Department of Natural Resources (DNR) appreciates the opportunity to review and comment on the proposed Freeborn Large Wind Energy Conversion System. Please review the "DNR Guidance for Commercial Wind Energy Projects" and "Avian and Bat Survey Protocols For Wind Energy Projects" for our standard commercial wind project recommendations. Both documents can be located at the following link: (http://www.dnr.state.mn.us/eco/ereview/additional_resources.html).

The DNR Guidance For Commercial Wind Energy Projects should be reviewed and considered throughout project development. The following specific sections are known to pertain to this project area: Rare Species and Native Plant Communities, Native Prairie, State Game Refuge, State Trails and Recreational Trail Corridors, Properties in Government Programs or With Conservation Easements, and Lakes, Wetlands, Streams, and Rivers.

The Blazing Star State Trail is being expanded in the northwest corner of the project boundary from Myre Island State Park to Hayward. Recommended setbacks for state trails are evaluated on a trail-by-trail basis due to the wide diversity of locations of the trails. Minnesota State Trails have numerous user groups including hiking, biking, skiing, and horseback riding. State trails occur in both very remote areas and highly developed parts of the state, and the quality of the area in terms of existing disturbance and recreational uses varies substantially. The safety of trail users, and possible risk from ice throw and equipment failure, will be a key component of a DNR review. The Public Utilities Commission considers trail setbacks on a trail-by-trail basis. The turbine layout should provide a significant setback from the State Trail to ensure the safety of trail users. This issue should be discussed further with the DNR when a preliminary turbine layout is available. Further information on Minnesota State Trails and snowmobile trails can be obtained from the DNR Data Deli at: <http://deli.dnr.state.mn.us/>.

March 18, 2015

Page 2

A State Game Refuge exists in the northwest corner of the project boundary. Based on the Invenergy presentation on March 3, 2015, no turbines will be placed in close proximity to the State Game Refuge. The DNR will review the preliminary turbine layout, when it is available, to determine if any potential conflicts exist.

Based on a field view of the site, the majority of farm sites have mature forested groves around them that appear to be larger than at other wind projects in southern Minnesota. The larger forested groves may provide potential summer habitat for bats and this should be taken into account during the decision making process for the acoustic monitoring effort and fatality monitoring protocols.

At the March 3, 2015, meeting the DNR brought up the potential to increase the bat acoustic data collection. The DNR still believes that additional acoustic detectors would be beneficial in order to collect a more robust data set for a project that encompasses a very large area. The more robust data collection would inform the record concerning bat activity and species presence throughout the project area. The DNR will support United States Fish & Wildlife Service recommendations concerning the need for additional acoustic detectors that would improve the detection of Northern Long-Eared Bats (proposed for federal listing).

At the March 3, 2015, meeting a discussion occurred concerning the need for specific wetland or grassland bird surveys. The DNR is not recommending additional surveys based on the small size and isolated nature of the wetlands and grassland habitat located within the project boundary. However, it may be beneficial for the record to conduct the surveys as background data for avian use in the project area. The surveys would supplement the avian point counts and eagle surveys that are currently planned for the site.

Project developers crossing (over, under, or across) any state land or public water with any utility (power lines, including feeder lines) need to secure a DNR License to Cross Public Lands and Waters (Minnesota Statutes, section 84.415). Information on obtaining a Utility License can be found at: http://www.dnr.state.mn.us/permits/utility_crossing/index.html. For detailed information on where the Public Waters are located in a project area, visit the following site and click on the Public Waters Inventory (PWI) Maps Download button: http://www.dnr.state.mn.us/waters/watermgmt_section/pwi/maps.html.

During development of the turbine layout it is recommended that numerous alternate turbine locations be included. The alternate turbine locations provide an opportunity to avoid or minimize potential impacts to natural resources and to work around other issues that arise during project development.

This review constitutes a preliminary review of the project and is not a substitute for reviewing potential turbine placement. Further review of the project will be conducted when the preliminary turbine locations are determined. The DNR will provide a second review of the project that is site specific to the proposed turbine locations, transmission lines, substations, and access roads. The DNR recommendation for fatality monitoring will be provided when the proposed turbine layout is available and the bat acoustic data has been analyzed.

March 18, 2015

Page 3

The DNR looks forward to working in a positive and collaborative manner on this project to ensure that sustainable energy sources are developed while protecting Minnesota's natural resources. Please contact me directly at (507) 359-6073 if you have any questions about this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Mixon".

Kevin Mixon
Regional Environmental Assessment Ecologist
Division of Ecological and Water Resources

cc: Lisa Joyal, Endangered Species Review Coordinator
Jamie Schrenzel, Environmental Review
Dan Girolamo, Area Hydrologist
Jim Sehl, EWR Assistant Supervisor
Jeanine Vorland, Area Wildlife Supervisor
Joel Wagar, Parks and Trails
Margaret Rheude, USFWS
Richard Davis, Department of Commerce-EERA
DNR R4 REAT
ERDB#20150260



Minnesota Department of Natural Resources

Division of Ecological and Water Resources, Box 25

500 Lafayette Road

St. Paul, Minnesota 55155-4025

Phone: 651-259-5109

E-mail: lisa.joyal@state.mn.us

March 26, 2015

Correspondence # ERDB 20150260

Mr. Todd Mattson
WEST, Inc.
1710 Douglas Drive, Suite 283
Golden Valley, MN 55422

RE: Natural Heritage Review of the proposed Freeborn Large Wind Energy Conversion System,
Freeborn County

Township (N)	Range (W)	Section(s)
102	20	7, 8, 13-18, 20-28, 33-36
102	19	7, 16-20, 29-32
101	20	1-4, 9-16, 21-28, 33-36
101	19	5-8, 17-20, 28-32

Dear Mr. Mattson,

As requested, the Minnesota Natural Heritage Information System has been queried to determine if any rare species or other significant natural features are known to occur within an approximate one-mile radius of the proposed project. Based on this query, rare features have been documented within the search area. Please note that the following **rare features may be adversely affected** by the proposed project:

- The Natural Heritage Information System (NHIS) tracks bat maternity colonies and hibernacula plus some Anabat data, but this information is not current or exhaustive. Although there are no NHIS records for bats in the vicinity of the proposed project, all seven of Minnesota's bats can be found throughout Minnesota. The northern long-eared bat (*Myotis septentrionalis*), tricolored bat (*Perimyotis subflavus*), big brown bat (*Eptesicus fuscus*), and little brown bat (*Myotis lucifugus*) are all state-listed species of special concern. The DNR looks forward to receiving the results of the bat acoustic monitoring and may have additional comments regarding state-listed bats at that time.

As you are aware, the U.S. Fish and Wildlife Service (USFWS) has proposed to federally list the northern long-eared bat (*Myotis septentrionalis*) and will make a final listing determination by April 2, 2015. Please continue to coordinate with the U.S. Fish and Wildlife Service regarding this species.

The Natural Heritage Information System (NHIS), a collection of databases that contains information about Minnesota's rare natural features, is maintained by the Division of Ecological and Water Resources, Department of Natural Resources. The NHIS is continually updated as new information becomes available, and is the most complete source of data on Minnesota's rare or otherwise significant species, native plant communities, and other natural features. However, the NHIS is not an exhaustive inventory and thus does not represent all of the occurrences of rare features within the state. Therefore, ecologically significant features for which we have no records may exist within the project area. **If additional information becomes available regarding rare features in the vicinity of the project, further review may be necessary.**

For environmental review purposes, the results of this Natural Heritage Review are valid for one year; the results are only valid for the project location (noted above) and the project description provided on the NHIS Data Request Form. Please contact me if project details change or for an updated review if construction has not occurred within one year.

The Natural Heritage Review does not constitute review or approval by the Department of Natural Resources as a whole. Instead, it identifies issues regarding known occurrences of rare features and potential effects to these rare features. To determine whether there are other natural resource concerns associated with the proposed project, please contact your DNR Regional Environmental Assessment Ecologist (contact information available at http://www.dnr.state.mn.us/eco/ereview/erp_regioncontacts.html). Please be aware that additional site assessments or review may be required.

Thank you for consulting us on this matter, and for your interest in preserving Minnesota's rare natural resources. An invoice will be mailed to you under separate cover.

Sincerely,



Lisa Joyal
Endangered Species Review Coordinator

cc: Kevin Mixon, DNR
Jamie Schrenzel, DNR
Richard Davis, DOC
Margaret Rheude, USFWS



Minnesota Department of Natural Resources

Division of Ecological and Water Resources, Box 25

500 Lafayette Road

St. Paul, Minnesota 55155-4025

Phone: (651) 259-5091 E-mail: samantha.bump@state.mn.us

January 18, 2017

Correspondence # ERDB 20150260-0003

Mr. Randy Duncan
WEST, Inc.
1710 Douglas Drive, Suite 283
Golden Valley, MN 55422

RE: Natural Heritage Review of the proposed Freeborn Wind Energy Expansion

County	Township (N)	Range (W)	Section(s)
Freeborn	101	19	1-5, 8-17, 20-29, 32-36
Freeborn	101	20	1,8,17,18,20,29
Freeborn	102	19	1-17,20-29,23-36
Freeborn	102	20	2,3,9-12,15,16

Dear Mr. Duncan,

The Minnesota Natural Heritage Information System has been queried to determine if any rare species or other significant natural features are known to occur within an approximate one-mile radius of the proposed project. For the results of this query, please refer to the enclosed database reports (please visit the Rare Species Guide at <http://www.dnr.state.mn.us/rsg/index.html> for more information on the biology, habitat use, and conservation measures of these rare species). Given the project layout is not available at this time, I am providing the database reports only and have not evaluated the potential for the proposed project to adversely affect these rare features.

Please note that the enclosed reports include records from the Rare Features Database only. For your information, the DNR Native Plant Communities, the MBS Sites of Biodiversity Significance, and MBS Railroad Rights-of-Way Prairies are three other databases available from the Natural Heritage Information System that you may find useful in your conservation planning efforts considering they are found within the project area. GIS shapefiles of these databases can be downloaded from the MN Geospatial Commons website at <https://gisdata.mn.gov/>. Please refer to the below links for Guidelines for help interpreting this data. We recommend that the project be designed to avoid impacts to these ecologically significant sites.

It should be noted that many SGCN are not tracked in the Natural Heritage Information System (NHIS), and the NHIS does not include records of migrating birds. Wind farms can affect birds due to collision mortality, displacement due to disturbance, habitat fragmentation, and habitat loss. Even if collision mortality rates are low, the additional mortality may be significant for rare species. In addition, the results from some studies suggest that grassland birds are deterred from nesting in otherwise appropriate habitat by the presence of tall structures in the vicinity. We recommend post-construction avian mortality monitoring to provide information regarding unexpected impacts, if any, to rare birds. Knowledge of these types of extraordinary events would allow for the implementation of additional measures to minimize disturbance, such as the curtailment of turbine operations during certain conditions. Regional DNR staff may have more recommendations regarding avian surveys based on local knowledge of the project site.

The Natural Heritage Information System (NHIS) tracks bat roost trees and hibernacula plus some acoustic data, but this information is not exhaustive. Although there are no NHIS records for bats in the vicinity of the proposed project, all seven of Minnesota's bats can be found throughout Minnesota. The northern long-eared bat (*Myotis septentrionalis*), tricolored bat (*Perimyotis subflavus*), big brown bat (*Eptesicus fuscus*), and little brown bat (*Myotis lucifugus*) are all state-listed species of special concern. River corridors and forested areas provide bat habitat and the potential for turbines to cause bat fatalities. Therefore, turbines should be placed an adequate distance from these areas. Actions, such as feather turbine blades below cut-in speeds, can minimize impacts to these species. We recommend conducting pre-construction acoustic bat surveys and post-construction bat fatality monitoring to provide useful information on the impacts to these species. As the U.S. Fish and Wildlife Service (USFWS) has listed the northern long-eared bat as threatened under the Endangered Species Act (ESA), please coordinate with the USFWS regarding this species.

The Natural Heritage Information System (NHIS), a collection of databases that contains information about Minnesota's rare natural features, is maintained by the Division of Ecological and Water Resources, Department of Natural Resources. The NHIS is continually updated as new information becomes available, and is the most complete source of data on Minnesota's rare or otherwise significant species, native plant communities, and other natural features. However, the NHIS is not an exhaustive inventory and thus does not represent all of the occurrences of rare features within the state. Therefore, ecologically significant features for which we have no records may exist within the project area. **If additional information becomes available regarding rare features in the vicinity of the project, further review may be necessary.**

The enclosed results include an Index Report and a Detailed Report of records in the Rare Features Database, the main database of the NHIS. To control the release of specific location information, which might result in the destruction of a rare feature, both reports are copyrighted.

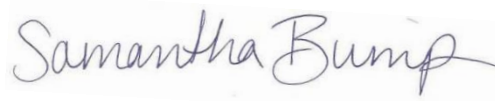
The Index Report provides rare feature locations only to the nearest section, and may be reprinted, unaltered, in an environmental review document (e.g., EAW or EIS), municipal natural resource plan, or report compiled by your company for the project listed above. If you wish to reproduce the index report for any other purpose, please contact me to request written permission. **The Detailed Report is for your personal use only as it may include specific location information that is considered nonpublic data under *Minnesota Statutes*, section 84.0872, subd. 2. If you wish to reprint or publish the Detailed Report for any purpose, please contact me to request written permission.**

For environmental review purposes, the results of this Natural Heritage Review are valid for one year; the results are only valid for the project location (noted above) and the project description provided on the NHIS Data Request Form. Please contact me if project details change or for an updated review if construction has not occurred within one year.

The Natural Heritage Review does not constitute review or approval by the Department of Natural Resources as a whole. Instead, it identifies issues regarding known occurrences of rare features and potential effects to these rare features. To determine whether there are other natural resource concerns associated with the proposed project, please contact your DNR Regional Environmental Assessment Ecologist (contact information available at http://www.dnr.state.mn.us/eco/ereview/erp_regioncontacts.html). Please be aware that additional site assessments or review may be required.

Thank you for consulting us on this matter, and for your interest in preserving Minnesota's rare natural resources. An invoice will be mailed to you under separate cover.

Sincerely,

A handwritten signature in dark ink that reads "Samantha Bump". The signature is fluid and cursive, with the first name "Samantha" being larger and more prominent than the last name "Bump".

Samantha Bump
Natural Heritage Review Specialist

enc. Rare Features Database: Index Report
 Rare Features Database: Detailed Report
 Rare Features Database Reports: An Explanation of Fields

Links: MBS Sites of Biodiversity Significance
 http://www.dnr.state.mn.us/eco/mcbs/biodiversity_guidelines.html
 DNR Native Plant Communities
 <http://www.dnr.state.mn.us/npc/index.html>

Cc: Cynthia Warzecha
 Kevin Mixon



Division of Ecological & Water Resources
21371 Highway 15 South
New Ulm, MN 56073

February 21, 2017

Ms. Andrea Giampoli
Invenergy LLC
One South Wacker Drive, Suite 1900
Chicago, IL 60606

Subject: Freeborn Large Wind Energy Conversion System
MNDNR Preliminary Review - Revised Project Boundary
Freeborn County, MN

Dear Ms. Giampoli:

The Minnesota Department of Natural Resources (MNDNR) appreciates the opportunity to review and comment on the proposed Freeborn Large Wind Energy Conversion System. Please review the "DNR Guidance for Commercial Wind Energy Projects" and "Avian and Bat Survey Protocols For Wind Energy Projects" for our standard commercial wind project recommendations. The guidance document and survey protocols can be located at the following link: (http://www.dnr.state.mn.us/eco/ereview/additional_resources.html).

The DNR Guidance For Commercial Wind Energy Projects should be reviewed and considered throughout project development. The following specific sections are known to pertain to this project area: Rare Species and Native Plant Communities, Native Prairie, State Game Refuge, State Trails and Recreational Trail Corridors, Properties in Government Programs or With Conservation Easements, and Lakes, Wetlands, Streams, and Rivers.

The Bat Acoustic Study Report indicates the bat passes per detector night (BPDN) at 10.4 with a standard error of 0.9. Table 4 indicates a higher failure rate of acoustic detectors in late July and August which is when you typically have higher BPDN. The significantly expanded project area contains an unnamed stream that ultimately flows into Woodbury Creek that has forested riparian areas combined with wetlands, grassland, and forested blocks. As such, further discussions should occur concerning the collection of additional bat acoustic data in 2017.

The MNDNR has identified two areas within the project area that may have higher bird and bat use (maps attached). The Avoidance Areas contain an increased amount of habitat that may concentrate birds and bats. The boundaries of the identified Avoidance Areas are drawn to indicate general areas of higher wildlife activity and they are not intended to be exact. As noted in the Bat Acoustic Study Report, under 4.1.1 Spatial Variation, detector station F4g (near a woodlot) and F6g (near a wetland) recorded significantly higher BPDN. Avoiding the placement of turbines in the identified Avoidance Areas may minimize wildlife impacts, including fatalities. The MNDNR recommends that turbines not be placed in the Avoidance Areas as a measure to potentially decrease fatalities and lessen the likelihood of having bat fatality estimates that could warrant operational mitigation (i.e. increased cut-in-speed).

Ms. Andrea Giampoli
February 21, 2017
Page 2

The MNDNR recommends that scientifically rigorous fatality monitoring be conducted for this project. The Avian and Bat Survey Protocols referenced above should be reviewed in order to develop a specific fatality monitoring plan. The fatality monitoring plan should be included in the Avian and Bat Protection Plan as it will be a key component to assess project impacts. As a moderate risk site, the MNDNR recommends a minimum of 1 year of fatality monitoring using scientifically valid protocols. The moderate risk level determination is preliminary as the additional bat acoustic data and turbine siting may change the risk determination. Additional years of fatality monitoring may also be warranted depending on the first year results.

During development of the turbine layout it is recommended that 5-6 alternate turbine locations be included. The alternate turbine locations provide an opportunity to avoid or minimize potential impacts to natural resources and to work around other issues that arise during project development.

The Native Prairie Evaluation Report dated September, 2015 will need to be updated to include the expanded project area. Additional comments concerning native prairie or state-listed species may be provided at a later date by Lisa Joyal, MNDNR Natural Heritage Review Coordinator.

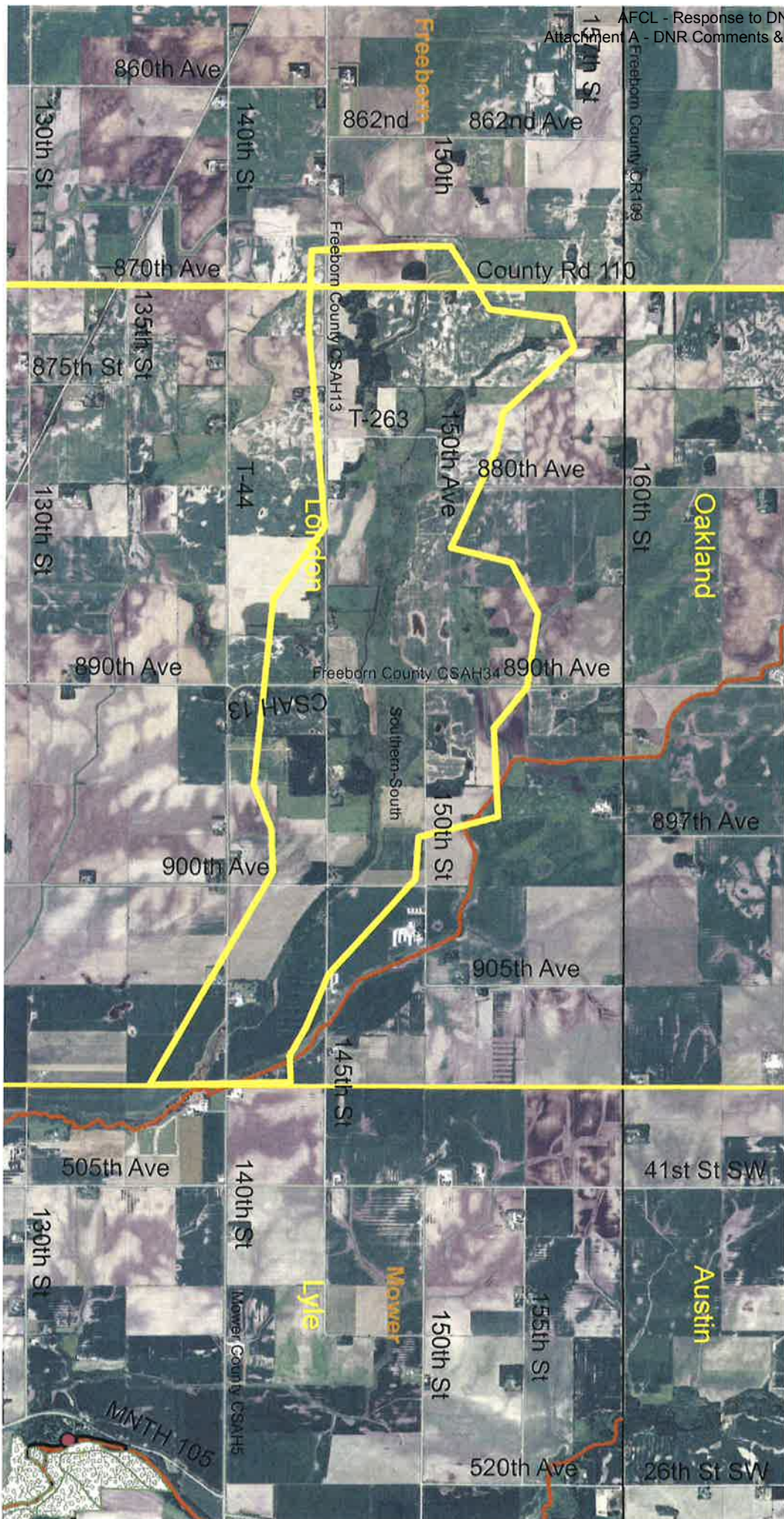
The DNR looks forward to working in a positive and collaborative manner on this project to ensure that sustainable energy sources are developed while protecting Minnesota's natural resources. Please contact me directly at (507) 359-6073 if you have any questions about this letter.

Sincerely,



Kevin Mixon
Regional Environmental Assessment Ecologist
Division of Ecological and Water Resources

Ec: Lisa Joyal, Endangered Species Review Coordinator
Cynthia Warzecha, Environmental Review
Jim Sehl, EWR Assistant Supervisor
Jeanine Vorland, Area Wildlife Supervisor
Joel Wagar, Parks and Trails
Margaret Rheude, USFWS
Richard Davis, Department of Commerce-EERA
ERDB#20150260



Avoidance Area



Avoidance Area

Freeborn Communication Record

April 11, 2017, 4:00 p.m.

Call attended by: Kevin Mixon (DNR), Sandra Simon (West), Karyn Coppinger (Invenergy), and Andrea Giampoli (Invenergy)

Objective: To follow up on DNR's request for a study that analyzed bat activity at different distance bands from suitable summer habitat, and to determine whether DNR recommended any additional acoustic surveys.

Notes:

Andrea – Invenergy would like to provide a meaningful analysis to meet DNR's goals to better understand bat use at certain distance bands beyond suitable summer habitat; however, previous robust studies have been conducted and Invenergy wouldn't likely meaningfully add to the literature at this scale. Invenergy provided data that demonstrated that it assessed whether it could conduct this analysis with existing data collected in 2015. It also provided citations to the studies previously conducted that it cited on the call.

Kevin – Given that the project area has been limited to a reduced project size, **he recommended that we skip any additional acoustics.** He was happy with our avoidance of high quality habitat, as seen in the most recent project layout. He asked whether we had communicated with USFWS on the northern long-eared bat, which Invenergy confirmed they had. Kevin added that in their recent PUC applications, Blazing Star and Red Pine Wind had included language on feathering below cut in, which would likely be limited to the date range of 4/1-10/30. Invenergy should look at draft site permit to see the language. He said that Rich Davis and DOC will likely require feathering below cut in on all site permits.

Joe Sedarski

From: Mixon, Kevin (DNR) <kevin.mixon@state.mn.us>
Sent: Wednesday, May 17, 2017 1:55 PM
To: Litchfield, Daniel
Subject: RE: Freeborn LWECS

Dan:

I took a quick look at the proposed transmission line route. You will need a MNDNR utility license to cross the Shell Rock River and we will require avian flight diverters at that crossing. Please contact Karla Ihns at 507-359-6072 if you have any questions about the license process.

South of the Glenwood Station there is a moderate site of biodiversity significance. To receive information regarding rare features and species in the vicinity of the proposed project, submit a completed NHIS data request form (http://files.dnr.state.mn.us/eco/nhnrp/nhis_data_request.pdf). The Natural Heritage review will identify known occurrences of rare plants, animals, and native plant communities in the vicinity of the project boundary. Please contact Lisa Joyal, Endangered Species Review Coordinator, at 651-259-5109 if you have questions about the NHIS review process.

Thanks

From: Litchfield, Daniel [mailto:DLitchfield@invenergyllc.com]
Sent: Wednesday, April 05, 2017 3:22 PM
To: Mixon, Kevin (DNR) <kevin.mixon@state.mn.us>; Warzecha, Cynthia (DNR) <cynthia.warzecha@state.mn.us>
Cc: Svedeman, Michael <MSvedeman@invenergyllc.com>; Joe Sedarski <jsedarski@merjent.com>; Coppinger, Karyn <KCoppinger@invenergyllc.com>
Subject: RE: Freeborn LWECS

Hi Kevin and Cynthia,

You both asked for shape files and I can get you the project boundary probably Monday and turbine and other facilities layouts in May. Yes we modified our boundary: we shrunk it. I hope this isn't a problem and expect, from your perspective, less impact is better. Andrea is out of the country at the moment but she can get in touch with you upon her return and I'll see about getting you shapefiles sooner.

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC
@danlitch

From: Mixon, Kevin (DNR) [mailto:kevin.mixon@state.mn.us]
Sent: Wednesday, April 05, 2017 10:49 AM
To: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Subject: Freeborn LWECS

Dan:

I received your letter dated March 31, 2017 concerning the Freeborn LWECS. The project boundary is significantly different than what we commented on in our February 21, 2017 letter. Please send the shapefiles for the new project boundary along with the turbine layout, crane paths, collector lines etc., if available. We will review the revised project boundary and provide comments in the near future.

Thanks!

This electronic message and all contents contain information which may be privileged, confidential or otherwise protected from disclosure. The information is intended to be for the addressee(s) only. If you are not an addressee, any disclosure, copy, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify the sender by reply e-mail and destroy the original message and all copies.

DNR COMMENTS ON DRAFT SITE PERMIT

eFiled 10/6/2017

<u>201710-136200-01</u>	PUBLIC	17-410	MINNESOTA DEPARTMENT OF NATURAL RESOURCES	COMMENTS	10/06/2017
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Minnesota Department of Natural Resources
Division of Ecological & Water Resources
500 Lafayette Road
St. Paul, MN 55155-4040

October 6, 2017

[Electronic Submittal]

Richard Davis
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

RE: In the Matter of the Application of Freeborn Wind Energy LLC for a Site Permit for the up to 84
Megawatt Freeborn Wind Farm in Freeborn County, Minnesota
PUC Docket Number: IP-6946/WS-17-410 (Site Permit)

Dear Mr. Davis,

The Minnesota Department of Natural Resources (DNR) has reviewed the Site Permit Application for the Freeborn Wind Farm in Freeborn County, Minnesota. Our agency offers the following comments for your consideration:

Utility Crossing License

The DNR is responsible for granting permission to companies proposing to cross state land or public waters with utility infrastructure projects. This permission is in the form of a utility crossing license. Although Table 11.1-1 of the Site Permit Application lists the DNR License to Cross Public Lands and Waters, our agency suggests including this licensing requirement under "Section 10.3.3 Collector Lines and Feeder Lines."

Native Prairie

Native prairie is grassland that has never been plowed and contains floristic qualities representative of prairie habitats. Table 8.18-2 of the Site Permit Application lists 128.7 acres of potential native prairie (previously plowed). For clarification purposes, if grassland has been plowed, it is not considered native prairie. Table 8.18-2 also lists 339.2 acres of potential native prairie (not previously plowed). The DNR advises that a Prairie Protection and Management Plan be prepared in accordance with Minnesota Public Utilities Commission requirements and in consultation with our agency.

Draft Avian Bat Protection Plan (ABPP)

The feathering language in the ABPP and the Site Permit should be consistent and correct. The DNR highly recommends using the same language in both documents. Specifically, the text on page 38 of the ABPP (second to last bullet) needs to be revised to reflect current feathering requirements. The DNR recommends the following text, which has been used for recent Minnesota Public Utilities Commission Site Permits: *All operating turbines at the facility must be equipped and operated with software enabling adjustment of turbine cut-in speeds. The Permittee shall operate all facility turbines so that all Wind Project turbines are programmed to be*

locked or feathered at wind speeds up to the manufacturer's standard cut-in speed, from one-half hour before sunset to one-half hour after sunrise, from April 1 to October 31 of each year of operation through the life of the project.

"Section 5.2 Species to be Monitored" (page 39) of the ABPP states, The monitoring plan is designed to detect carcasses and estimate all bird and bat carcass rates with enough precision to determine if the operational conservation measures are effective in reducing the estimated bird and bat carcass rate for the Project, compared to bird and bat carcass rates for other operating projects. This statement should be deleted from the ABPP because the effectiveness of curtailment cannot be determined by comparing it to other project fatality rates. The DNR recommends removing all of Section 5.2 from the ABPP.

Our agency appreciates the opportunity to comment on the Site Permit Application for the Freeborn Wind Farm. If you have any questions, please contact me at 651-259-5078.

Sincerely,

A handwritten signature in cursive script, reading "Cynthia Warzecha". The signature is written in dark ink and has a fluid, connected style.

Cynthia Warzecha
Principal Planner

CC: Michael Kaluzniak, Minnesota Department of Commerce
Dan Litchfield, Freeborn Energy, LLC
ERDB # 20080288

AFCL LETTER TO JUDGE SCHLATTER

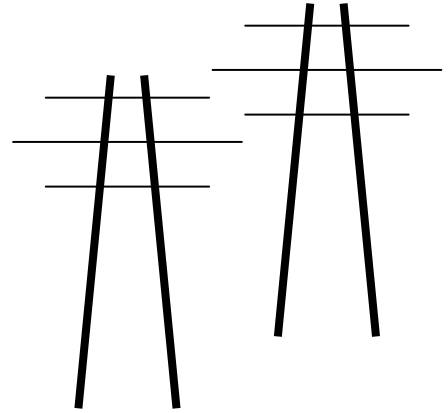
eFiled 1/30/2018

<u>20181-139546-01</u>	PUBLIC	17-410	ASSOCIATION OF FREEBORN COUNTY LANDOWNERS	LETTER--REQUEST TO THE AGENDA RE	01/30/2018
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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 30, 2018

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

via eFiling and US mail

RE: DNR – Establish Time Certain -- Subpoena
OAH Docket: 80-2500-34633
MPCU Docket: IP-6946/WS-17-410

Dear Judge Schlatter:

I've just had a discussion with DNR Counsel Sherry Enzler regarding the AFCL Subpoena and we'd like to establish a time certain for DNR testimony on February 22, 2018. I'd suggested 3 p.m. to limit the time DNR staff would need to be present.

Would you please add this time certain request to the agenda for the next Prehearing Conference scheduled for February 7, 2018?

Thank you for your consideration in this matter. Please let me know if you have any questions or require anything further.

Very truly yours,

Carol A. Overland
Attorney at Law

cc: Parties served via eFiling and eService
Sherry Enzler, DNR via direct email Sherry.Enzler@state.mn.us

AFCL email to SherryENZler, DNR, with Letter to ALJ

Sent 1/30/2018

Subject: Subpoena Freeborn Wind - Time Certain
From: "Carol A. Overland" <overland@legalelectric.org>
Date: 1/30/2018 12:58 PM
To: sherry.enzler@state.mn.us

Ms. Enzler -

Attached please find memorializing letter to Judge Schlatter with request for time certain, 3 pm on 2/22, the final day of hearing, which has been eFiled. The time certain should be no problem. We have a status conference on 2/7.

FYI, Commerce's Motion to Quash was withdrawn after the agreement we reached was filed with the ALJ, and thus there will be no ruling on that Motion. The Dept. of Health has not filed Motion to Quash, and an agreement has been reached, to be filed ASAP.

There is no pending Motion to Quash, and there never was a Motion to Quash that pertained to the subpoenas of the DNR.

Carol A. Overland, for Association of Freeborn County Landowners

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"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

— Attachments: —

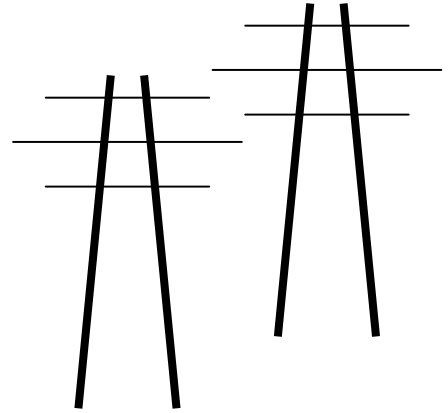
DNR_TimeCertain.pdf

124 KB

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 30, 2018

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

via eFiling and US mail

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Very truly yours,

Carol A. Overland
Attorney at Law

cc: Parties served via eFiling and eService
Sherry Enzler, DNR via direct email Sherry.Enzler@state.mn.us