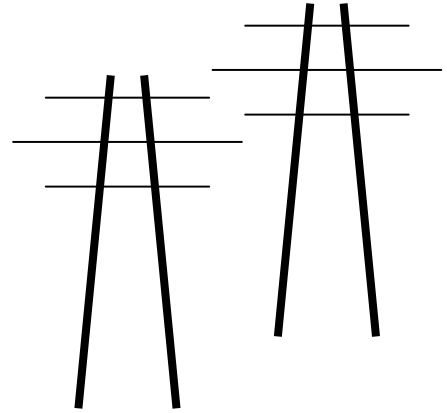


# Legalelectric, Inc.

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June 8, 2018

Dan Wolf  
Executive Secretary  
Public Utilities Commission  
121 – 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101

eFiled and eServed

RE: AFCL - Exceptions and Request for Oral Argument  
Freeborn Wind, LLC  
MPCU Docket: IP-6946/WS-17-410

Dear Mr. Wolf:

On behalf of Association of Freeborn County Landowners, please find Exceptions to Recommendation of Administrative Law Judge and request for Oral Argument at the Commission meeting for deliberation regarding the above-entitled docket.

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

Very truly yours,

Carol A. Overland  
Attorney at Law

Enclosures

cc: Association of Freeborn County Landowners

**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Nancy Lange  
Dan Lipschultz  
Matt Schuerger  
Katie Sieben  
John A. Tuma**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

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

**PUC Docket No. IP6946/WS-17-410**

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**EXCEPTIONS OF ASSOCIATION OF FREEBORN COUNTY LANDOWNERS TO  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION  
OF THE ADMINISTRATIVE LAW JUDGE**

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The Association of Freeborn County Landowners (AFCL), requests that the Freeborn Wind permit be denied. AFCL, pursuant to Minn. Stat. §14.61 and Minn. R. 7829.2700, submits the following exceptions to the report of the Administrative Law Judge in the above captioned proceeding. The Association of Freeborn County Landowners are affected parties as landowners in Freeborn County, an area targeted for this project, and as Intervenors with granted full party status, request that the Commission take these Exceptions under consideration. The community does not consent to this project.

The Association of Freeborn County Landowners (AFCL) adopts the Exceptions of KAAL as if fully incorporated herein.

The Association of Freeborn County Landowners respectfully requests oral argument in the above-captioned matter when it comes before the Commission.

**I. SYSTEMIC PROBLEMS OF WIND SITING IN MINNESOTA DEMAND PREVENTATIVE AND PRECAUTIONARY SITING, AND ULTIMATELY, A REVAMPING OF WIND SITING PROCESS AND PROCEDURES.**

The Commission and Commerce – EERA are well aware of the systemic flaws in the wind siting process. These flaws inevitably result in siting issues for new projects, as evidenced in this case, and result in problems with existing projects that have been improperly sited. Bent Tree and Big Blue are existing projects before the Commission with multiple complaints and noise monitoring ordered, issues that would have been avoided with more rigorous siting review.<sup>1</sup> Others are in the pipeline and will follow.

AFCL requests that the Commission begin now, with this Freeborn Wind case, to practice respectful and preventative wind siting, in compliance with and utilizing the existing applicable wind and noise siting rules and standards to protect the public from potential permit violations and protect developers from permit violations and difficult mitigation. These wind and noise siting rules and standards, as noted by the Administrative Law Judge in her Recommendation of denial of the permit, call the applicant's project into question. The applicant has not demonstrated that it can meet existing siting rules and standards. The permit should be denied.

This is the first Minnesota wind project to be properly sited, using the siting criteria of the Power Plant Siting Act. Minn. Stat. §216E.03, Subd. 7. This is the first Minnesota wind project to be reviewed in a contested-case proceeding, as requested by AFCL and agreed to by Freeborn Wind. The importance of these two factors of the PPSA criteria and this contested case proceeding cannot be overstated. Yet with the resulting Recommendation that the permit be denied, wind developers are up in arms, wringing their hands, and quaking, arguing for

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<sup>1</sup> AFCL-11, Bent Tree Noise Monitoring and Noise Study, Phase 1; ACL 15, Hansen Rebuttal, Schedule D, Bent Tree Phase 2, beginning p. 55 of 152; See also AFCL-15, Hansen Rebuttal, Schedule F, PUC Letter – Show Cause, Big Blue Wind Project, PUC Docket IP-6851/WS-10-1238, p. 147 of 152.

continuance of prior lax rule interpretations, improper siting procedures, and ineffective regulatory oversight.<sup>2</sup>

Dan Lichfield, an Invenergy senior manager, objected to Schlatter's interpretation of Minnesota's noise regulations, saying it "is impossible to meet for a wind farm. ... Every other wind farm in the state has not been subject to this interpretation."<sup>3</sup>

Yes, Invenergy's Litchfield has a point. Every other wind farm in the state of Minnesota has been sited improperly. Every other wind farm in Minnesota has a permit stating that the project was reviewed and sited under authority, under jurisdiction, of the wind siting statutes, Chapter 216F, and Minnesota Rules 7854. Not one wind permit lists the legally applicable parts of the Power Plant Siting Act, particularly the siting criteria of Minn. Stat. §216E.03, Subd. 7. However, there is no evidence that profitable wind projects cannot be sited in compliance with existing wind siting statutes, rules and standards. The Commission will ultimately have to wrestle with these siting issues, and until then, the Commission will have applications for wind projects to consider.

For now, the immediate issue is this Freeborn Wind permit, and this permit should be denied. It is time for developers to provide noise studies in the application as required by rules and guidelines; for setbacks to provide sufficient distance for modeling margin-of-error; for decommissioning plans to be set forth in the application and subject to public review and comment; for the Draft Site Permit template to conform to rules and standards; for the complaint process to be revised; for regulators to conscientiously review applications for completeness; for information to be provided up front, and for regulators to require it rather than allow it to be

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<sup>2</sup> See, e.g., EDF Renewables [20186-143638-01](#). Many more such "Exceptions" from developers are expected. Note those filed in this docket, from EDF Renewables, RES, WOW, Vestas and AWEA have cut and paste language and footnotes. Form letters have little weight.

<sup>3</sup> Administrative law judge says PUC should reject Freeborn County wind project, Star Tribune May 17, 2018, <http://www.startribune.com/administrative-law-judge-says-puc-should-reject-freeborn-county-wind-project/482980081/>

provided after permitting, if at all; for reviewing agencies to do their job by providing comments and showing up to assure comments and concerns are part of the hearing record. It is time for the Commission to site respectfully, using the regulatory tools at hand to prevent foreseeable problems that have cropped up with other projects, such as noise violations, shadow flicker disturbances, avian mortality and need for take permits, and economic harm to agriculture, property values, tourism and recreation, and public safety services and infrastructure.

The Commission is in a rough spot, but that's regulation. On one hand there are industry promotional groups such as Wind on the Wires (WoW) touting economic benefits to participants and local governments, ignoring the legitimate siting issues that make wind siting, and living within a wind project, difficult.<sup>4</sup> On the other hand, lobbying groups such as Center of the American Experiment invade the project area with billboards and radio ads claiming wind is the driving factor of high electricity rates, countered by WoW radio ads in the project area. These diametrically opposed claims both ignore the legitimate siting issues clamoring for attention, issues that bring consternation to the Commission and which have communities in uproar.<sup>5</sup> Multiple rulemaking petitions to the Commission and MPCA regarding these legitimate siting issues have been filed and dismissed out of hand.<sup>6</sup> The Draft Site Permit template does not comport with wind "standards" and uses arbitrary setbacks. Legislatively mandated rulemaking resulted not in a rulemaking proceeding, but the 2008 "Wind Siting

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<sup>4</sup> WOW Public Comment of Soholt, Public Hearing, Tr. p. 183-187 ("and if it were an option, which unfortunately it's not, I would eagerly and willingly live among a wind farm."); WOW filed Comment, 3/15/2018, [20183-141082-01](https://www.mpr.ca.gov/eDocket/2018/03/20183-141082-01).

<sup>5</sup> See "American Experiment's Wind Energy Campaign Comes to Freeborn County," <https://www.americanexperiment.org/2018/03/american-experiments-wind-energy-campaign-comes-freeborn-county/>; WOW Public Comment of Soholt, Public Hearing, Tr. p.187, l. 5 – 11. ("So we – we had a statement out about the Center of the American Experiment Report. We talked to reporters, and we are correcting this information that the – that's on Center of the American Experiment that's out. We had a small budget in our main budget for renewable – for radio ads the last two years.")

<sup>6</sup> See, e.g., eDocket 20169-124844-01 and Public Hearing Exhibit P. 22, p. 15-16, 20183-149052-07, quoting MPCA Commissioner Stine's response to Overland's Rulemaking Petition, 9/12/2016 ([20169-124844-01](https://www.mpr.ca.gov/eDocket/20169-124844-01)).

Standards,”<sup>7</sup> leading to projects sited with inadequate and incomplete siting which sets up violation of permit conditions. This puts landowners and residents at risk, and robs landowners of their use and enjoyment of their property – the nuisance comes to the community. If developers want projects to be sited, they must assure projects have a low risk of violating rules or standards and must have a low risk of nuisance, depriving landowners of their use and enjoyment of their property.

The Commission must address these systemic problems in issuing any individual wind permits, and going forward, must also continue to determine corrective action for previously permitted projects. In this climate of regulatory flux, it may indeed be very difficult to site any wind project. Thorough systemic review and revamping of the wind siting process is decades overdue, and we need to get to work on that. But for now, in this docket, the Commission must act within the existing regulatory framework, use the existing tools, and with consideration that prior interpretations of regulation may have developed into lax review and improper permitting and permitting procedures.

AFCL strongly urges the Commission’s acceptance of the Administrative Law Judge’s Recommendation of denial of the Freeborn Wind site permit. The applicants have not met their burden of proof – they have not demonstrated that they will meet the noise standard and rule. This is a particularly important action in light of the complaints and potential violations that have come before the Commission recently, and those that will likely be presented to the Commission in the future. Poor siting is not easily remedied.

In addition to our strong support of the ALJ’s Recommendation of denial of the Freeborn Wind site permit, and the specific Exceptions, below, there are several other related issues the

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<sup>7</sup> AFCL-8, Wind Siting Standards, PUC Docket 07-1102 (note 5/17 in Trimont (IP6907/WS-13-258) agenda item at 4:03, Mr. Swanson’s comment, “It is a standard set in a generic wind standards docket, it’s not a rule... it can be varied” Comments at 4:03: [http://minnesotapuc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=739](http://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=739)

Commission should consider:

**II. IN PRACTICE, DECOMMISSIONING PLANS ARE NOT PART OF THE APPLICATION, CONTRARY TO APPLICATION RULES, WHICH PROVIDES NO OPPORTUNITY TO ADDRESS DECOMMISSIONING SECURITY IN THE PERMITTING PROCESS.**

The ALJ's Findings of Fact regarding decommissioning and restoration are found at paragraphs 507 to 532, and Conditions in paragraphs 550 and 551.

Under current practice, decommissioning information is not provided in the application, EERA does not raise this omission to the Commission, and the Commission declares applications "substantially complete" without any acknowledgement, and perhaps without any knowledge, of the omission of decommissioning information – a systemic problem. In this case, requisite decommissioning information was not included in the application, and according to Freeborn Wind and Commerce-EERA the decommissioning plan isn't being drafted and filed until after a permit is issued!

Under the rules, decommissioning information including cost and financial assurance plan should be provided in the Application:

**Decommissioning and restoration.**

The applicant shall include the following information regarding decommissioning of the project and restoring the site:

- A. the anticipated life of the project;
- B. the estimated decommissioning costs in current dollars;
- C. the method and schedule for updating the costs of decommissioning and restoration;
- D. the method of ensuring that funds will be available for decommissioning and restoration; and
- E. the anticipated manner in which the project will be decommissioned and the site restored.

Minn. R. 7854.0500, Subp. 13.

The Freeborn Wind application did not include the information required in an application

by Minn. R. 7854.0500, Subp. 13.<sup>8</sup> The Wind Siting Standards reinforce the requirement that the decommissioning information of Minn. R. 7854.0500, Subp. 13 be included in the application.<sup>9</sup>

Freeborn Wind's application was submitted, the question of completeness was opened for comment, the application was reviewed by EERA and Commerce staff, and inexplicably declared complete at the August 10, 2018 meeting, and in the Order issued August 31, 2017.

AFCL received Invenergy's response to its questions about decommissioning, which were not reassuring, and which instead left decommissioning issues for later. When asked several specific questions regarding the Application sections on decommissioning, Invenergy's response was only:

Freeborn Wind will comply with the terms of the Site Permit as it relates to the preparation, content and distribution of a decommissioning plan. See Section 11.0 of the Draft Site Permit.<sup>10</sup>

When asked about decommissioning costs, Invenergy's Litchfield testified that:

A: I don't feel I can answer that question. I've never looked at actual costs of actual wind decommissioning. I know it's happened, I've talked to people who have been a part of those projects, but I've not seen the numbers. I don't – I've been a part of projects where we provide decommissioning cost estimates and they're a deconstruction cost proposal, so – and they're usually provided by same types of vendors that do wind farm construction. So I wouldn't have any real reason to doubt them.

Q: Has Invenergy been involved in any wind decommissioning?

A: Not to my knowledge.<sup>11</sup>

Invenergy's Litchfield also testified that there is no decommissioning plan for this project at this point, there is no cost estimate for decommissioning at this point, and there is "no form of financial assurance for the purpose of decommissioning the facility at this time."<sup>12</sup> There is also

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<sup>8</sup> FR-1, Site Permit Application.

<sup>9</sup> AFCL—8, Wind Siting Standards, App. A (p. 15).

<sup>10</sup> AFCL 21, Freeborn Wind Response to AFCL IR 16.

<sup>11</sup> Litchfield, Tr. Vol. 1A, p. 46, l. 13-25.



no specific plan for financial assurance, although Litchfield anticipated that a site permit condition would require financial assurance.<sup>13</sup> This is exactly the situation where a decommissioning plan is most needed.

The ALJ's Recommendation infers that it is the job of an Intervenor to object to the applicant's failure to file the decommissioning information required by rule, and that AFCL should have filed a Motion for Reconsideration if the Commission declares an application "substantially complete" when some required information is not in the application. ALJ Recommendation, FoF 518. The Commission's Completeness determination, however, is only acceptance of the application as "substantially" complete. It's absurd to put responsibility for assurance of a complete application on an intervenor that was not even a party at the time! This is the job of Commerce-EERA and the job of the Commission. It is EERA and the Commission that missed Freeborn Wind's omission or let it slide.

Decommissioning plans have been pushed back by Commerce-EERA to a post-permit pre-operational stage, out of public view. The Commission should bring a halt to the practices of declaring "completeness" of applications and granting of permits where applications are not in compliance with application requirements, and end the consistent failure to allow public review and comment of decommissioning plans.

AFCL urges the Commission to require compliance with Minn. R. 7854.0500, Subp. 13 now, and require that this information be filed for agency and public review and a hearing; and in the alternative, to provide that information for agency public review and comment. No permit should be issued without the opportunity to address the decommissioning plan.

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<sup>12</sup> Litchfield, Tr. Vol. 1A, p. 43, l. 8-17; see also Tr., Vol. 2, p. 101, l. 7-9.

<sup>13</sup> Litchfield, Tr. Vol 2, p. 99, l. 18 - 100, l. 12.

### **III. THE PERMIT COMPLAINT PROCESS IS INADEQUATE AND MUST BE REVISED TO PROVIDE TIMELY INVESTIGATION OF COMPLAINTS AND ENFORCEMENT.**

The ALJ's Findings of Fact regarding the complaint process are found at paragraphs 533 to 539, and Conditions in paragraphs 545 regarding interference complaints.

The Commission's complaint process is broken. The Commission is well aware that there have been problems with the Bent Tree and Big Blue projects, but it takes years for complaints that are not resolved to work their way to the Commission.<sup>14</sup> The complaint process proposed for this project is the same boilerplate language used in every wind project, and there have only been nominal revisions over time.<sup>15</sup> The ALJ recognized that changes may be imminent, but did not recommend any specific changes.<sup>16</sup> Each Site Permit includes a complaint process, located at the very end of the document.<sup>17</sup> A copy of the permit is mailed to everyone that is given notice of the issuance of the permit – this is how landowners are informed of their rights.<sup>18</sup> The complaint process is complex and is subject to revision:

Q: What would it take to initiate a review of the complaint process?

A: This is when you would provide a comment on it. It's part of the draft site permit, so—

Q: So right now?

A: So this is when comments should be submitted, yeah.<sup>19</sup>

AFCL strongly advocates that “right now” is the time to initiate a review of the complaint process. The Commission has direct knowledge that the complaint process is inadequate. No permit should be issued without thorough review and revision of the complaint procedures.

### **IV. THE FREEBORN WIND PERMIT SHOULD BE DENIED**

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<sup>14</sup> See Testimony of Cheryl Hagen, Public Hearing Tr. p. 108-111; Bernie Hagen, p. 112-115.

<sup>15</sup> Davis, Tr. Vol. 2, p. 180, l. 14-17.

<sup>16</sup> FoF para. 533-539.

<sup>17</sup> EERA-8, Draft Site Permit – p. 72 of 77.

<sup>18</sup> Davis, Vol. 2, p. 179-180.

<sup>19</sup> Davis, Tr. Vol 2, p.180.

The Administrative Law Judge has recommended the Freeborn Wind permit be denied. We are at this late stage in permitting without essential and required information, review, and process. No permit should be granted unless and until the applicant can sufficiently demonstrate that it can meet the noise and shadow flicker rules and standards; decommissioning information has been provided; the complaint process revised; both decommissioning and complaint process opened for comment and reviewed by Commerce, the public, and the Commission.

AFCL requests that the Commission begin now, with this Freeborn Wind case, to begin respectful and preventative wind siting, utilizing the existing applicable siting standards to protect the public from potential permit violations and difficult mitigation. These siting rules and standards, as noted by the Administrative Law Judge in her Recommendation of denial of the permit, call the permit into question. The applicant has not met its burden of proof and has not demonstrated that it can meet existing siting rules and standards.

Association of Freeborn County Landowners respectfully requests oral argument in the above-captioned matter when it comes before the Commission.

Respectfully submitted,

DATE: June 8, 2018



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## LINE ITEM EXCEPTIONS

60. A public hearing was held in Albert Lea, Minnesota, on February 20, 2018. All applicant and agency witnesses and many members of the public were sworn or affirmed on oath.

93. In the Application, the anticipated construction start was May 2020, with commercial operations commencing in the fourth quarter of 2020.<sup>157</sup> However, Freeborn Wind reports that Xcel Energy intends to advance the construction timetable and start construction in the fall of 2019, with commercial operations still commencing in the fourth quarter of 2020.<sup>158</sup> The commencement of construction is dependent on several factors, including changes in production tax credit availability.<sup>1</sup> The commercial operations date is dependent on several factors,<sup>159</sup> including weather, permitting, and other development activities.

114. There was no testimony regarding independent verification of signatures on agreements or testimony alleging that any person continued to be bound by the terms of an agreement based on misrepresentations of the fired agent.

116. The Administrative Law Judge finds that there is insufficient evidence to determine whether Freeborn Wind has secured its land rights in a manner free from coercion due to misrepresentations of the fired agent.

151. Minn. Stat. 216E.12, Subd. 4 does specifically apply to projects sited under Minn. Stat. Ch. 216F, although this is not a situation where eminent domain would be used. Minn. Stat. §216F.02, Exemptions.

152 (et seq.) Freeborn Wind states that project facilities will be sited and constructed predominantly on leased agricultural lands owned by participating landowners. According to Freeborn Wind, these participating landowners will be compensated for the use of their property, yielding increased valuations on the farmland due to the harvest of electricity along with traditional agricultural products that underpin the value of the land.<sup>232</sup> Therefore, Freeborn Wind anticipates that there will be no unmitigated impacts to the property values of participating landowners.<sup>233</sup>

~~154. There was conflicting testimony regarding the ability of agricultural pilots to conduct aerial spraying within the perimeter of a wind farm.<sup>237</sup> AFCL provided no expert testimony regarding the impact of wind turbines on neighboring agricultural property or practices. (see FoF 434 – 440).~~

184. This section concerns the Project's compliance with Minnesota noise regulations and whether the Draft Site Permit's provisions relating to noise are sufficient, both are at issue in this proceeding. The potential for the Project to cause adverse health effects more generally is

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<sup>1</sup> AFCL – 24, IR 24

discussed at section H of this Report although causation is not at issue in this administrative permitting proceeding.

202. The Minnesota Pollution Control Agency (MPCA) enforces the state's noise rules (Minn. R. Ch. 7030), but only for those projects for which it issues a permit. In the case of wind siting permits, it is the Commission that issues the permit with noise conditions. Enforcement of Commission-issued site permits is within the jurisdiction of the Commission and the Department of Commerce EERA, not the MPCA.<sup>2</sup> Freeborn Wind looks to Minn. Stat. Ch. 116 (2016), the chapter that establishes the MPCA, for a definition of "noise." That chapter defines "noise" to mean "any sound not occurring in the natural environment, including, but not limited to, sounds emanating from aircraft and highways, and industrial, commercial, and residential sources."<sup>310</sup> Freeborn Wind contends that because "noise" is any sound not occurring in the natural environment, the noise limits in subpart 2 of Minn. R. 7030.0400 apply to wind turbine noise alone, and that the rule regulates only the noise emissions of non-natural sources considered individually, not the total amount of noise a receptor experiences.

213. Freeborn Wind did not follow this guidance "because the frequency spectrum of noise from wind turbines is relatively fixed, and once one part of the spectrum becomes limited, so does every other part of the audible spectrum."<sup>326</sup> The 50 dB(A) limit for receptors was attained modeled by placing the wind turbines at certain distances from the receptors. For the Project, the 50 dB(A) limit at residences controls Project LFN levels to about 60 dB(C) or less at residences, and limits-models infrasound to-at levels orders of magnitude below the human hearing threshold."<sup>327</sup>

214. While the record evidence legitimates concerns over the Project's potential to generate harmful LFN and infrasound, opponents of the Project are correct that Minnesota's noise standards do not address them. DOC-EERA did not recommend the addition of any conditions or special conditions specific to infrasound or low frequency noise.<sup>328</sup> While the Commission, the Department of Health, the Department of Commerce, and the Pollution Control Agency all acknowledge public complaints concerning wind turbine generated infrasound and LFN merit concern, in 2012, the MPCA Commissioner, in response to a rulemaking Petition, stated that "After consulting with colleagues at the Minnesota Departments of Health and Commerce, I have concluded that the current understanding of wind turbine noise and its potential effects is insufficient to support rule making at this time,"<sup>3</sup> and in 2016, that "the present knowledge of the potential health effects of infrasound does not lend itself to the development of an appropriate standard at this time."<sup>329</sup> No rulemaking has been initiated regarding wind noise.

216. The Commission's General Permit Standards requires that the "Project must meet Minnesota Noise Standards, Minnesota Rules Chapter 7030, at all residential receivers (homes). Residential noise standard NAC 1, L<sub>50</sub> 50 dB(A) during overnight hours. Setback distance

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<sup>2</sup> See AFCL-11, Bent Tree Noise Monitoring and Noise Study Phase I; ACL 15, Hansen Rebuttal, Schedule D, Bent Tree Phase 2, beginning p. 55 of 152; AFCL 15, Hansen Rebuttal, Schedule F, Big Blue – PUC Letter - Request for Response to Alleged Site Permit Violations and to Show Cause.

<sup>3</sup> eDocket 20169-124844-01 and Public Hearing Exhibit P, 22, p. 15-16, 20183-149052-07, quoting MPCA Commissioner Stine's response to Overland's Rulemaking Petition, 9/12/2016 (20169-124844-01).

calculated based on site layout and turbine for each residential receiver.”<sup>331</sup> The Commission prescribed a minimum setback of “[t]ypically 750 – 1500 ft. is required to meet noise standards depending on turbine model, layout, site specific conditions.”<sup>332</sup> The Standards minimum setback from homes is “500 ft + distance required to meet state noise standard.” Id.

233. Mr. Hankard predicts that the total nighttime noise standard (ambient plus wind turbine noise)  $L_{50}$  will be exceeded at times when ambient noise levels are 50 dB(A) and above.<sup>361</sup> The average background noise  $L_{50}$  levels, including both ambient and turbine noise, range from 33 to 57 dB(A), under conditions during which the turbines would operate (“Critical” and “Full Power” turbine operations). The average background noise  $L_{10}$  levels range from 37 to 60 dB(A) under conditions during which the turbines would operate (“Critical” and “Full Power” turbine operations). This information was not provided with Freeborn Wind’s original Application. It was provided as a post-hearing exhibit following questioning by DOC-EERA during which it became apparent that Freeborn Wind interpreted Minn. R. 7030.0040 to require only the measurement of the proposed additional source of noise, not including ambient noise.<sup>362</sup>

The parties stipulated to receipt of this exhibit, and there was no opportunity for cross-examination regarding this post-hearing exhibit.

236. The methodology Mr. Hankard employed has a margin of error to its noise level measurements of plus or minus three dB.<sup>366</sup> An increase of three dB corresponds to a doubling of sound power but only a slightly noticeable increase in loudness. Mr. Hankard contends that, by using the most conservative values for the model’s parameters, the margin of error with respect to underestimating sound levels is much smaller than three dB.<sup>367</sup> An increase of three dB applied to the post hearing modeling would result in many receptors with levels at or greater than 50 dB.

238. Another cause for uncertainty is the absence of certain empirical data. That is, sound measurements are not made when one would expect the loudest levels to occur. As Mr. Hankard pointed out, the American National Standards Institute (ANSI) “discourages measurements when the local wind speed is 11 miles an hour or greater. - And that’s because what you’re actually measuring at that point is distortion of the microphone and not actual sound in the air.”<sup>369</sup> Accordingly, Mr. Hankard did not include any noise monitoring results over 11 miles per hour. Minnesota noise monitoring protocol also excludes noise monitoring performed when wind speeds are greater than 11 miles per hour.<sup>4</sup> The average monthly wind speed in the Freeborn Project Area is greater than 11 miles per hour.<sup>370</sup> While the wind speed at the hub height of a turbine may differ from the wind speed near ground level for a variety of reasons,<sup>371</sup> Freeborn Wind’s Application stated that, at 80 meters above the ground, predicted wind speeds near the Project Area are 6.0 to 8.8 meters per second.<sup>372</sup> At 8.8 meters per second, this is just under 20 miles per hour. 6 meters per second is over 13.4 miles per hour, above the exclusionary threshold for noise monitoring.

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<sup>4</sup> Minn. R. 7030.

244. The Administrative Law Judge further recommends that the plan be made available for public and agency comment and a hearing held with a summary report. The Commission should then review and approve a pre-construction noise mitigation plan that best only if it assures that turbine noise will not cause noise levels that exceed Minnesota's noise standards.<sup>377</sup>

245. Freeborn Wind cannot lawfully operate its turbines if their operation results in total noise at any receptor in excess of the standards in Minn. R. 7030.0400. If the Commission grants a Site Permit and post-construction measurements show that total noise levels exceed L<sub>50</sub> dB(A) for any receptor, the Commission shall suspend the permit and Freeborn Wind must adjust its operations, including shutting down one or more turbines, if doing so will result in complying with the standards. The mitigation options should be clarified prior to granting of any permit.

256. The results of the study indicate that, of the 254 receptors modeled, seven were predicted to realistically experience more than 30 hours of shadow flicker per year. Three of the seven receptors were at participating landowners' occupied residences and would experience 40:28, 30:52, and 32:30 hours of shadow flicker. Four non-participating landowners' occupied residences would experience 31:12, 34:35, 34.29, and 45.23 hours of shadow flicker.<sup>393</sup>  
However, whether landowners are participants or non-participants is not a consideration for limits on shadow flicker.

267. Freeborn Wind asserts the Project will create approximately 200 temporary jobs during the construction phase and approximately ten permanent jobs during operation.<sup>407</sup>

271. The record demonstrates that the Project, if built, will result in both short-and long-term benefits to the local economy. There is no evidence in the record regarding direct or indirect costs of the project to the community.

272. Freeborn Wind maintains that wind farms benefit the environment and health of the regional community by reducing emissions from fossil fuels. Throughout their operational life-cycle, LWECs operations emit the smallest amount of greenhouse gasses (GHGs) compared to other energy generation methods. Wind energy does not emit sulphur oxides (SOx), nitrogen oxides (NOx), particulate matter (PM<sub>10</sub>), or mercury, and drastically reduces water consumption.<sup>415</sup> When asked what emissions would be avoided, to substantiate the claims and provide a direct link, "There are no specific agreements/contracts that can be identified."<sup>5</sup>

275. The Administrative Law Judge concludes that there is insufficient evidence to make a determination as to whether and how the Freeborn Wind project would generally contribute to public health by helping to reduce the emission of GHG's in Minnesota. - There is no evidence in the record regarding criteria air pollutants of fossil fuel emissions.

291. AFCL argued that much of Freeborn Wind's witness testimony regarding the health effects of wind turbines was not relevant because causation is not an issue in this administrative permitting proceeding. AFCL reasons that causation is not an issue because Freeborn Wind is the

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<sup>5</sup> AFCL-27, Freeborn Wind Response to AFCL IR 26.

applicant, seeking a site permit, and that this is not a personal injury case where proving causation is the burden of a plaintiff. Applicant must demonstrate that its project meets the criteria of Minn. Stat. §216E.03, Subd. 7, and proving that there is no causal link is not among the criteria. <sup>453</sup> bears the burden of proof.

292. The Administrative Law Judge agrees that, as the Applicant, Freeborn Wind bears the burden of proof in this proceeding. However, causation and the burden of proof are two different concepts. Minn. Stat. § 216E.03, subd.7 (2016), lists some of the criteria the Commission must consider in deciding whether to grant a site permit. The subdivision states, in relevant part:

(b) To facilitate the study, research, evaluation, and designation of sites and routes, the commission shall be guided by, but not limited to, the following considerations:

(1) evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants . . . and the effects of . . . electric and magnetic fields resulting from such facilities on public health and welfare . . . .<sup>454</sup>

This statutory language contemplates consideration of a causal relationship between the impacts of large electric power generating plants and on public health and welfare, but it does not require demonstration of a causal link or association. It does require consideration of whether the criteria is met and whether the project will comply with statutes, rules, and standards.-

298. The Administrative Law Judge finds that it is not in the best interest of the local community where a wind farm is being located, or of the wind energy industry generally, to locate wind turbines in a manner that annoys, angers, and alienates the people whose lives are most directly affected by the turbines.

300. The Commission approved for release and comment the Draft Site Permit based upon the noise analysis in Freeborn Wind's Application, which included a summary prediction of ambient noise, but no predictions of combined ambient and turbine noise.<sup>461</sup> As discussed in Section XI.D.v. of this Report, the total average background noise L<sub>50</sub> levels, including both ambient and turbine nighttime noise levels, exceed those permitted by Minn. R. 7030.0040.<sup>462</sup>

302. In light of the revised total noise predictions, and the lack of evidence that Freeborn Wind took the required 500 additional feet into account in establishing residential setbacks, the Administrative Law Judge recommends that, if the Commission issues a Site Permit in this docket, the Draft Site Permit conditions be amended to require Residential setbacks of 1500 feet for all non-participating landowners.<sup>466</sup> The standards do not differentiate between participating and non-participating landowners.

306. Freeborn Wind reported that it is coordinating with applicable emergency and non-emergency response staff in the area, such as regional air ambulance services, sheriff's offices, and fire departments to develop a safety plan during construction and operation of the Project. Freeborn Wind planned to be in contact with local first responders to offer information about the Project.<sup>470</sup> There is no evidence in the record regarding anticipated costs for these emergency services and first responders and how those costs would be paid.



310. Draft Site Permit Condition 4.4, which provides for a setback of 250 feet from public road ROW and designated public trails (such as the identified snowmobile trail), does not fully address this concern.<sup>477</sup> The turbine closest to the snowmobile trail (turbine 20) is 538 feet away from the snowmobile trail, exceeding the minimum setback in the Draft Site Permit (250 feet), as well as the setback required by Section 26-51 of the Freeborn County Ordinance (1.1 times the turbine height), and the likely distance the ice was thrown from the turbine at the Bent Tree Wind farm on February 22, 2018.<sup>478</sup> Based on the estimated distance of the ice throw, if the Commission issues a Site Permit in this docket, the setback from public roads should be a minimum of 350 feet.

316. Several local units of government, local officials, and members of the public raised concerns regarding the potential for Project construction to damage local roads.<sup>485</sup> Freeborn Wind states it is committed to repair all damage to local roads and to negotiate in good faith with Freeborn County and Hayward, London, Oakland, and Shell Rock Townships to develop an agreement that will address local concerns regarding development, road use, and drainage issues.<sup>486</sup> However, Freeborn does not accept execution of road agreements as a permit condition,<sup>6</sup> and testified that if there is no road agreement, Freeborn Wind will proceed without an agreement.<sup>7</sup>

317. The Draft Site Permit contains provisions that adequately address the use of public roads, the construction of turbine access roads, and private roads. For example, the Draft Site Permit requires Freeborn Wind to make satisfactory arrangements with the appropriate road authorities for use, maintenance and repair of the roads that may be subject to increased impacts due to transportation of equipment and Project components.<sup>487</sup> While this requirement can be satisfied in a number of ways,<sup>488</sup> Freeborn Wind reports it has begun meeting with local road authorities and offered to negotiate a road use agreement that establishes Freeborn Wind's responsibilities to maintain the roads in safe condition and repair roads and public drainage infrastructure damaged during construction.<sup>489</sup> As above, however, Freeborn does not accept execution of road agreements as a permit condition,<sup>8</sup> and testified that if there is no road agreement, Freeborn Wind will proceed without an agreement.<sup>9</sup>

(FoF 319 – 413 – AFCL defers to expertise and knowledge of KAAL)

415. There are Wildlife Management Areas (WMA) and Waterfowl Protection Areas (WPA) within ten miles of the Project Area. The Shell Rock WMA and the Shell Rock Water Trail is-are located adjacent to the Project Area.<sup>626</sup> The MPCA expressed concern about impacts to the Shell Rock River.<sup>10</sup>

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<sup>6</sup> AFCL 18, Freeborn Wind Response to AFCL IR20.

<sup>7</sup> Litchfield, Tr. Vol. 1A, p. 27-28.

<sup>8</sup> AFCL 18, Freeborn Wind Response to AFCL IR20.

<sup>9</sup> Litchfield, Tr. Vol. 1A, p. 27-28.

<sup>10</sup> EERA-5, Agency Comments (20182-139859-01).

417. Recreational impacts will generally be visual in nature, affecting individuals using public lands near the Project Area for recreation.<sup>629</sup> Turbines will be set back from these public lands a minimum of the three RD by five RD setbacks from all non-leased properties per the Commission's siting guidelines, but will be visible from the Shell Rock River, WMA and Shell Rock River Water Trail.<sup>630</sup>

418. Based on the record, ~~no anticipated there may be~~ adverse impacts to recreational resources ~~have been established, particularly the Shell Rock River,~~ as a result of the Project.

422. In the event that there is damage to agricultural drain tile as a result of the Project, the tile will be repaired according to the agreement between Freeborn Wind and the landowner.<sup>635</sup> Freeborn Wind has committed to repairing all agricultural tile damage that occurs during the construction phase of the Project, whether that of participants or non-participants.<sup>636</sup> Additionally, the Draft Site Permit contains conditions adequate to address drain tile damage. The conditions require Freeborn Wind to "avoid, promptly repair or replace all tile lines broken or damaged during all phases of the Project," and to fairly restore or compensate landowners for damage to drain tile during construction.<sup>637</sup>

435. Commenter John Thisius, an experienced aerial crop sprayer with 13,500 hours of ag flying time, testified that you cannot safely fly within a wind farm and he would not put himself or his pilots at risk, and while it is possible to treat crops on the outskirts of a wind facility, it is impossible to safely do so within a wind farm because of the turbulence from the moving blades and problems with depth perception.<sup>654</sup>

436. Commenter Ray Rauenhorst, ~~also an experienced formerly an~~ aerial crop sprayer, testified that wind farms were first appearing as he approached retirement, and thus he is not dexperienced flying near turbines. He had sprayed among widely spaced turbines. He also pointed out that turbines can be turned off to reduce the hazard they pose.<sup>655</sup>

438. AFCL argues based on the testimony of John Thisius, a pilot actively in the business of aerial spraying, that the project will result in barring aerial spraying and seeding in the Project Area causing farmers to incur more expense to accomplish these tasks or the project eliminates the option of aerial spraying and seeding.<sup>658</sup> AFCL provided no ~~testimony witness~~ on the issue of aerial spraying and seeding.

439. The record contains no evidence that any of the affected landowners use aerial spraying. Nor is there a record of the cost of aerial spraying or its cost relative to other methods. ~~It is unclear from the record how closely Mr. Thisius or Mr. Rauenhorst had studied the Project and considered how its turbine layout would affect aerial spraying.~~ The Administrative Law Judge finds no insufficient basis for recommending a determination that the site permit be denied because of any regarding impacts the Project will have on aerial spraying and seeding.

452. After being notified of possible additional eagle nests in the area, Freeborn Wind conducted several additional surveys of the area but did not find any omitted eagle nests in or near the Project Area.<sup>691</sup> There is no comment in the record from USFWS regarding the list of eagles, nests, and foraging areas provided by AFCL.

453. If any additional new bald eagle or raptor nests isare identified in the Project Area in the future, Freeborn Wind asserts that it will follow the procedures identified in the Avian and Bat Protection Plan (ABPP) and consult with MDNR, USFWS, and DOC-EERA<sup>692</sup> as necessary.

455. Project operation may result in avian mortality from collision with the Project's turbines or other structures.<sup>697</sup> Post-construction monitoring completed at wind facilities located on agricultural landscapes in southern Minnesota and northern Iowa show avian fatality estimates ranging from 0.27 to 5.59 birds per megawatt produced per year.<sup>698</sup> Given the lack of unique ecological features within the Project Area that would attract birds, estimated avian fatality rates at the Project would be expected to be within this range or lower.<sup>699</sup> There is no statement from USAWS in the record regarding whether USFWS recommends an eagle take permit for this project.

494. Throughout their operational life-cycle, LWECS operations emit the smallest amount of greenhouse gasses compared to other energy generation methods by replacing energy generated by fossil fuels. WFreeborn claims wind energy production also eliminates emission of SO<sub>x</sub>, NO<sub>x</sub>, PM<sub>10</sub>, and mercury, as well as drastically reduces water consumption.<sup>771</sup>

When asked what emissions would be avoided, to substantiate the claims and provide a direct link, "There are no specific agreements/contracts that can be identified."<sup>11</sup> There is no evidence in the record regarding a comparison of wind energy and solar.

496. Increased deployment of wind and other renewable resources with near-zero life-cycle greenhouse gas (GHG) emissions leads to a direct reduction in the use of fossil fuels like coal and natural gas if fossil fuel generation is not used and is shut down. As described in the comment submitted by Minnesota Center for Environmental Advocacy (MCEA), the Project will aid Minnesota in meeting its statewide GHG emission reduction goals and reducing harmful air pollutants.<sup>773</sup>

However, no direct link was demonstrated in the record.

497. ~~The~~ Any avoided air emissions from the Wind Farm "will benefit all Minnesotans, especially helping children with asthma, seniors with COPD, and others with respiratory conditions."<sup>774</sup> A representative from the American Lung Association in Minnesota attended the public hearing and stated that "projects like this are important for avoiding the use of fossil fuels and helping protect the air quality we all breathe."<sup>775</sup>

499. The Administrative Law Judge finds that the Project, if a Site Permit is issued by the Commission, that although the record does not demonstrate a direct link, it will-may not have a negative impact on water emissionsquality, and will-may have a positive impact on air emissions.

509. Once the Easement terminates, Freeborn Wind is obliged to "remove above-ground and below-ground . . . Windpower Facilities" and to restore the subject property "to a condition reasonably similar to its original condition."<sup>787</sup>

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<sup>11</sup> AFCL-27, Freeborn Wind Response to AFCL IR 26.

512. The Administrative Law Judge finds that the Easement Agreement requires that any future owners of any wind energy facilities built as part of the Freeborn Wind Project will be required to bear the costs of decommissioning, as defined in ~~the~~ any Site Permit the Commission grants to Freeborn Wind, to the same extent as Freeborn Wind is required to bear those costs.

513. AFCL asserts that Freeborn Wind has not complied with Freeborn County's ordinance regarding decommissioning requirements.<sup>790</sup> EERA's Davis testified that he was not aware that Freeborn County has decommissioning requirements in its wind ordinance.<sup>12</sup> ~~While~~ The limited comments Freeborn Wind made in its Site Permit Application regarding decommissioning do not meet Freeborn County's requirements, but, the Ordinance has no timeline attached to it. ~~Thus, Freeborn Wind is not in violation of the Ordinance.~~

514. Freeborn Wind testified, and answered IRs, regarding decommissioning, and stated it "will comply with the terms of the Site Permit as it relates to the preparation, content and distribution of a decommissioning plan."<sup>13</sup> Pursuant to Section 11.1 of the Draft Site Permit, Freeborn Wind will develop a Project decommissioning and restoration plan in accordance with the requirements of Minn. R. 7854.0500, subp. 13, prior to the Project's pre-operation meeting with DOC-EERA.<sup>791</sup> At the end of commercial operation, the Project owners will be responsible for removing wind facilities, and removing the turbine foundations to a depth of four feet below grade.<sup>792</sup>

515. AFCL objects to Freeborn Wind's proposal to develop its decommissioning and restoration plan after the Site Permit is issued. AFCL argues notes that Minn. R. 7854.0500, subp. 13 requires these plans be submitted with the application.<sup>793</sup> AFCL argues the Commission should deny the permit application because Freeborn Wind has not provided these plans.

516. The onus of meeting application requirements is on the applicant, and enforcing compliance rests with EERA and the Commission. Minn. R. 7854.0500 addresses what information must be provided in an application, and subp. 13 regarding decommissioning requires:

The applicant shall include the following information regarding decommissioning of the project and restoring the site:

- A. the anticipated life of the project;
- B. the estimated decommissioning costs in current dollars;
- C. the method and schedule for updating the costs in current dollars;
- D. the method of ensuring that funds will be available for decommissioning and restoration; and
- E. the anticipated manner in which the project will be decommissioned and the site restored.

517. The Wind Siting Standards state:

<sup>12</sup> Davis, Tr. Vol. 2, p. 175, l. 13 – p. 176, l. 2.

<sup>13</sup> AFCL 21, Freeobrn wind Response to AFCL IR16.

**Decommissioning Plan.** As a part of its permit application, the permittee must submit a decommissioning plan describing the manner the permittee plans on meeting the requirements of Minnesota Rule 7836.0500, subpart 13 (now 7854.0500, Subpart 13).<sup>14</sup>

517518. The Decommissioning Plan-information included in Freeborn Wind’s Application estimates the service life of Project to be thirty years, and states that “[p]roject decommissioning has not yet been determined.”<sup>794</sup> Freeborn Wind goes on to state that it will create a “thorough decommissioning cost estimate prior to construction begins . . . .”<sup>795</sup> Freeborn Wind’s Litchfield testified regarding cost of decommissioning that “I’ve never looked at actual costs of actual wind decommissioning.”<sup>15</sup> No “estimated decommissioning costs in current dollars” been provided nor has a “method and schedule for updating the costs in current dollars” been provided. No “method of ensuring that funds will be available for decommission and restoration” been provided.<sup>16</sup> The Decommissioning Plan in Regarding “the anticipated manner in which the project will be decommissioned and the site restored” is nominal, the Application includes language stating that Freeborn Wind will remove the improvements from properties, and restore them to their approximate original condition. Specifically, it says that decommissioning “will include the removal of above-ground wind facilities . . . .” In addition, “[f]oundations will be removed to a depth of 48 inches below current grade.” Unless landowners want them to remain, access roads will be removed, and disturbances created from the decommissioning itself will be restored.<sup>796</sup> The record reflects that to Litchfield’s knowledge, Invenergy has not been involved in any decommissioning.<sup>17</sup>

518-519 The Commission issued its Order Finding Application Complete and Varying Time Limits; Notice and Order for Hearing [Order] on August 31, 2017.<sup>797</sup> The Commission’s Summary notes that “In this Order the Commission finds that Freeborn Wind’s application is substantially complete.” Id. In the Commission Action paragraph, the Order stated, “The Commission concurs with the EERA that the application is substantially complete. The Commission will, however, direct Freeborn Wind to respond to all reasonable requests regarding the project and to facilitate in every reasonable way the continued examination of the issues by the EERA and Commission staff.” Id. Further, Order point 1 states, “The Commission hereby accepts Freeborn Wind Farm, LLC’s site permit application as substantially complete.” AFCL did not raise its decommissioning and restoration plan concerns in comments prior to the issuance of the Order. No one requested reconsideration of the Order. Accordingly, the Commission’s Order is final. There were no intervening parties to this proceeding at the time of the Commission’s comment period or the Commission’s order. Id., VII (C).

519520. The Commission found the application “substantially complete.” and did not address the requirements of Minn. R. 7854.0500, subp. 13.<sup>798</sup> The Commission’s order was also silent regarding the Wind Siting Standards requirement of a decommissioning plan in the application.<sup>18</sup> The Commission’s order granted variances to the time frames for consideration of application completeness and for issuance of a draft site permit, but did not grant a variance, and none was

<sup>14</sup> AFCL – 8, Order Establishing General Wind Permit Standards, p. 15 of pdf (January 11, 2008, PUC Docket E,G-999/M-07-1102).

<sup>15</sup> Litchfield, Tr. Vol. 1A, p. 46, l. 13-25.

<sup>16</sup> Litchfield, Tr. Vol. 1A, p. 43, l. 8-17.

<sup>17</sup> Litchfield, Tr. Vol. 1A, p. 46, l. 13-25.

<sup>18</sup> AFCL – 8, Wind Siting Standards, p. 15, PUC Docket E,G-999/M-07-1 102, # 4897855

requested, for the submission of developed decommissioning and restoration plans.<sup>799</sup> Contrary to the rule, ~~the~~ Draft Site Permit contemplates submission and review of decommissioning and restoration plans after construction has been completed but before commencing operations.<sup>800</sup>

This is not consistent with Minn. R. 7854.0500, subp. 13.

520521. The Commission referred this matter to the Office of Administrative Hearings because AFCL had “identified contested issues of fact.”<sup>801</sup> The Commission did not specifically identify decommissioning and restoration plans in its referral. However, the Commission further explained: “The ultimate issue in this case is whether Freeborn Wind’s proposed site application meets the criteria set forth in Minn. Stat. § 216F and Minn. R. ch. 7854. This turns on numerous factors that are best developed in formal evidentiary proceedings.”<sup>802</sup> The Administrative Law Judge interprets the Commission’s referral to request findings and recommendations as to whether the requirements of ch. 7854 have been met with regard to permit issuance. The Commission’s declaration that the application was substantially complete, and referral to OAH, does not relieve DOC-EERA or the Commission of its responsibility to assure application requirements are met.

521522. DOC-EERA proposed to add language to the Draft Site Permit Section 11.1 that “requires the Permittee to update the decommission plan every five years, and also to identify all sureties and financial securities that are established to ensure site restoration.”<sup>803</sup> With DOC-EERA’s proposed language included, Section 11.1 reads:

The Permittee shall submit a decommissioning plan to the Commission at least fourteen 14 days prior to the pre-operation meeting, and provide updates to the plan every five years thereafter. The plan shall provide information identifying all surety and financial securities established for decommissioning and site restoration of the project in accordance with the requirements of Minn. R. 7854.0500, subp. 13. The decommissioning plan shall provide an itemized breakdown of costs of decommissioning all project components, which shall include labor and equipment. The plan shall identify cost estimates for the removal of turbines, turbine foundations, underground collection cables, access roads, crane pads, substations, and other project components. The plan may also include anticipated costs for the replacement of turbines or repowering the project by upgrading equipment.

The Permittee shall also submit the decommissioning plan to the local unit of government having direct zoning authority over the area in which the project is located. The Permittee shall ensure that it carries out its obligations to provide for the resources necessary to fulfill its requirements to properly decommission the project at the appropriate time. The Commission may at any time request the Permittee to file a report with the Commission describing how the Permittee is fulfilling this obligation.<sup>804</sup>

522523. Deferral of drafting and approval of the decommissioning plan to a time after the permit is granted removes this from the public view, where there is no opportunity to



comment. This shift in timing is contrary to the intent of the Commission’s process and commitment to public participation.

524. The Commission’s referral of this matter to the Office of Administrative Hearings requests findings and recommendations concerning the Draft Site Permit’s compliance with Minnesota Rules chapter 7854. Minnesota Rule 7854.0500, subpart 13 requires decommissioning and restoration plans be submitted with the application. The decommissioning information supplied with the application, and subsequently in the record, is not what is required by the rule and siting standards, and is insufficient to constitute a decommissioning plan. The application is not complete and there is not sufficient decommissioning information in the application or the record to support issuance of a permit.

~~523-525~~ Freeborn Wind and DOC-EERA assert that the requirement in section 11.1 of the Draft Site Permit that Freeborn Wind submit a fully-developed plan to comply with subpart 13 at least 14 days prior to commencing operations satisfies subpart 13 sufficiently to allow a permit to issue. This position may be reasonable concerning some details of the decommissioning process that can be more meaningfully developed once construction is completed. It is likely substantially easier to estimate costs of removing structures and restoring the site after construction. Furthermore, as noted above, Freeborn Wind stated in its Application that it would provide a “thorough decommissioning cost estimate prior to construction begins . . . .”<sup>805</sup> However, this procedure is not compliant with Minn. R. 7854.0500.

525. Subpart 1 of Minn. R. 7854.0900 (2017) requires public notice of draft site permits. It further requires that an informational public meeting be held and offers the opportunity to request a contested case proceeding. ~~No similar n~~Notice requirements ~~or and~~ procedural rights are implicated by the pre-operation filings of decommissioning and restoration plans where the public is deprived of the opportunity to review and comment on all aspects of the decommissioning plan in meetings, public hearing, comments, and briefing.<sup>807</sup>

526. Freeborn Wind employee Daniel Litchfield stated that he is a member of a Commission working group on decommissioning. He stated that the Commission is considering whether “they need to change permit conditions on decommissioning” and the working group is considering “establishing some form of financial assurance, independent from just a promise that the project will get removed.”<sup>808</sup> Mr. Litchfield’s testimony was that he had never looked at costs of decommissioning, and that Invenergy has not been involved in decommissioning of a wind project.<sup>19</sup> This suggests that both regulators and industry participants recognize that financial guarantees should be secured during the permitting process.

527. The Administrative Law Judge concludes that the requirements of chapter 7854 are not met unless Freeborn Wind demonstrates its capacity to guarantee it can fund the decommissioning and restoration of its Project prior to ~~commencing construction~~issuance of a permit. Furthermore, the Draft Site Permit contains appropriate conditions to ensure proper decommissioning and

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<sup>19</sup> Litchfield, Tr. Vol. 1A, p. 46, l. 13-25.

~~restoration of the Project site, with the exception of demonstrating that it has the resources necessary to carry out decommissioning and restoration.~~<sup>809</sup>

538. The Administrative Law Judge finds that the existing complaint procedures, as set forth at Attachment A to the Commission's Draft Site Permit, are insufficient pursuant to the requirements of Minn. R. 7829.1500, .1600, and .1700 (2017), and the Commission should incorporate revised complaint procedures into this permit, if issued. There is insufficient evidence in the record for the Administrative Law Judge to recommend specific changes in the procedures.

~~539. The Administrative Law Judge recognizes that the Commission may develop new procedures which it believes will be more effective in the future and may choose to substitute those procedures for the procedures proposed in the Draft Site Permit. Should the Commission decide to issue a Site Permit in this proceeding, it would be appropriate for it to use either the Complaint Procedures in as attached to the Draft Site Permit, or to use revised procedures currently being developed.~~

548. In light of the revised total noise predictions, and the lack of evidence that Freeborn Wind took the required 500 additional feet into account in establishing residential setbacks, the Administrative Law Judge recommends that Draft Site Permit Condition 4.2 be amended to require Residential setbacks of 1500 feet for all participating and non-participating landowners.<sup>818</sup>