



Minnesota Center for Environmental Advocacy

Using law, science, and research to protect Minnesota's environment, its natural resources, and the health of its people.

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June 8, 2018

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
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VIA ELECTRONIC FILING

Re: In the Matter of the Application of Freeborn Wind Energy LLC for a Large Wind Energy Conversion System Site Permit for the 84 Megawatt Freeborn Wind Farm in Freeborn County PUC Docket No. IP-6946/WS-17-410 OAH Docket No. 80-2500-34633

Dear Mr. Wolf,

The Minnesota Center for Environmental Advocacy (“MCEA”) respectfully submits these exceptions to Administrative Law Judge (“ALJ”) Schlatter’s May 14, 2018 Findings of Fact, Conclusions of Law, and Recommendations in Docket No. IP-6946/WS-17-410 (“Report”). The noise-related Finding Nos. 177-247 of the Report should be rejected because they misinterpret Minnesota law and fail to rely on the best scientific evidence in the record. Moreover, this interpretation of the Minnesota Pollution Control Agency’s (“MPCA”) noise standards would have a detrimental impact on other current and future wind energy projects throughout the state. This would hinder Minnesota’s efforts to meet its greenhouse gas reduction goals and threaten the state’s environment, economy, and the health of its people.

I. Maximizing Wind Energy Is Important to Meet Minnesota’s Greenhouse Gas Emission Reduction Goals

As explained in MCEA’s March 8, 2018 comments in this docket, Minnesota has statewide greenhouse gas reduction goals that reflect the need to reduce emissions by at least 80 percent by 2050.¹ Meeting these goals is necessary to avoid the worst impacts of climate change, both globally and within Minnesota. Throughout Minnesota, the impacts of climate change are expected to include: more extremely hot days and droughts; more frequent and severe flooding; and increased vector-

¹ Minn. Stat. §216H.02, subd. 1.

borne diseases, among others.² The sooner the international community is able to reduce carbon emissions, the less severe these impacts will be.

Unfortunately, Minnesota is not on track to meet its climate goals. The state missed its first benchmark in 2015 by a wide margin, and is poised to miss its next benchmark in 2025.³ According to the MPCA's 2017 Biennial Report to the Minnesota Legislature, "without significant additional effort, Minnesota will not achieve the second Next Generation Energy Act ["NGEA"] goal—a 30% reduction in GHG emissions by 2025."⁴ An "all hands on deck" approach is needed if the state wishes to meet its obligations under the NGEA and contribute to the global effort to reduce atmospheric carbon.

Increased deployment of renewable resources like wind energy has the potential to help the state meet its climate goals—and improve air quality—by directly reducing fossil fuel use. As coal plants reach the end of their useful lives in Minnesota, the state has a significant opportunity to replace these dirty generating plants with renewable resources like wind. This transition to cleaner energy would not only help the state meet its climate goals under the NGEA, but also reduce air pollution that can cause or worsen cardiovascular and lung conditions like bronchitis, asthma, and heart attacks, which can ultimately result in more premature deaths.⁵

In addition to human health benefits, wind energy has the potential to positively impact local Minnesota communities through job creation, increased tax revenues, and lease payments to landowners. Employment in the wind energy industry nearly tripled in Minnesota between 2000 and 2014, providing Minnesotans with well-paying jobs in a robust and growing industry: average wages in the wind energy sector were \$61,500 annually in 2013, compared to a total economy average of \$50,110.⁶ As wind deployment continues to increase throughout the state, these benefits will further increase.

It is clear that the wind industry is important to the state of Minnesota, and becoming more so. Increased deployment of renewable resources is necessary if the state wishes to meet its greenhouse gas reduction goals, which it is currently not on track to do. Utilizing renewable energy sources like wind can also help to reduce the negative human health impacts of burning dirty fossil fuels. Finally, the economic benefits of wind energy make it advantageous for local communities in Minnesota. Alongside these benefits is the fact that wind energy is now more

² "What Climate Change Means for Minnesota", United States Env't Protection Agency (Aug. 2016), <https://www.epa.gov/sites/production/files/2016-09/documents/climate-change-mn.pdf>.

³ "2017 Biennial Report to the Minnesota Legislature", Minn. Pollution Control Agency, 2 (Jan. 2017) <https://www.pca.state.mn.us/sites/default/files/lraq-2sy17.pdf>.

⁴ *Id.* at 2.

⁵ "Life and Breath: How Air Pollution Affects Public Health in the Twin Cities", Minn. Pollution Control Agency & Minn. Dept. of Health, 11 (July 2015) <https://www.pca.state.mn.us/sites/default/files/air-61.pdf>.

⁶ "Minnesota Clean Energy Economy Profile," Collaborative Economics, Inc., 6 (Oct. 2014) <https://mn.gov/commerce-stat/pdfs/mn-clean-energy-econ-full-rpt.pdf>.

cost-effective than electricity produced from either coal or natural gas.⁷ Unfortunately, Judge Schlatter’s recommendation would threaten the continued deployment of wind—and its many benefits—in Minnesota.

II. The ALJ’s Recommendation Misinterprets Minnesota Law

The ALJ’s interpretation of how this project would comply with Minnesota’s noise standards is untenable. As Freeborn Wind submitted, the statutory definition of “noise” is “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.”⁸ The MPCA separately defines background noise—that which occurs in the natural environment—as “all noise sources *other than the noise of concern*,” and provides guidance regarding how to isolate the specific noise being monitored to measure it separately from background noise.⁹ According to Freeborn Wind,

Specifically, total noise levels from all sources are to be measured and recorded. Then the noise source being measured should be turned off, and a noise level reading taken with all other existing noise sources in operation. Then, the background noise is subtracted from the total noise level to find the noise level of the source being measured. It is the source noise that must meet the levels set in the Noise Standards.¹⁰

MCEA agrees with Freeborn Wind’s interpretation of the noise standards as applying only to the source noise, rather than the total noise level at the location. MCEA also understands that Freeborn Wind conducted its Noise Analysis with conservative assumptions and concluded that the project will comply with the Noise Standards once operational.¹¹

Unfortunately, Judge Schlatter has issued a ruling with an interpretation contrary to the statutory definition. Judge Schlatter agrees with the Association of Freeborn County Landowners (“AFCL”) and the Department of Commerce, Energy Environmental Review and Analysis (“DOC-EERA”) that the noise standards apply to the total ambient level of sound, rather than the source noise alone. However, this is an unprecedented interpretation which would make it more difficult—if not impossible—for current and future wind farms in the state to meet these noise standards.

⁷ Mike Hughlett, “As Price Drops, Renewable Energy Surges to Second Place in Minnesota”, Star Trib. (Mar. 1, 2018) <http://www.startribune.com/renewable-energy-now-produces-25-percent-of-electricity-in-minnesota/475552393/>.

⁸ Freeborn Wind Proposed Findings of Fact and Conclusions of Law at 23, No. 128 (citing Minn. Stat. § 116.06, subd. 15).

⁹ Freeborn Wind Proposed Findings of Fact and Conclusions of Law at 24, No. 131 (citing MPCA Guide at 11-12; Minn. R. 7030.0060). Emphasis added.

¹⁰ Freeborn Wind Proposed Findings of Fact and Conclusions of Law at 24, No. 131 (citing MPCA Guide at 11-12; Minn. R. 7030.0060).

¹¹ Freeborn Wind Proposed Findings of Fact and Conclusions of Law at 25-27, No. 136-142.

Judge Schlatter’s interpretation would make it difficult for new wind farms like the Freeborn Wind project to generate environmental, human health, and economic benefits for the state of Minnesota. It would also call into question existing site permits for currently operating wind farms. This could have a significant impact in a state like Minnesota with a robust wind industry which accounts for a significant portion of electricity generation.¹² For these reasons, MCEA takes exception to the interpretation in the Report.

MCEA also takes exception to the Report’s heavy reliance on non-peer reviewed reports submitted through public comments that were not sponsored by experts and whose authors were not available for cross examination. Peer-reviewed science is necessary to maintain the integrity of the record and of the contested case process. Allowing such “science” – which is exempt from scrutiny by other established experts in their respective fields – into the record enables less accurate, less applicable information to be given equal standing with peer-reviewed scientific analyses. This reduces the robustness of the record, and also sets a precedent that groups may utilize biased and non-expert information in the future. Moreover, allowing non-peer-reviewed science into the record is contrary to the previous actions taken by Judge Schlatter in other contested cases.¹³

In summary, the Minnesota Center for Environmental Advocacy supports Freeborn Wind’s position in this case with respect to the applicability of the Noise Standards¹⁴ and further supports approval of this project.

III. Conclusion

The environmental, economic, and human health benefits of wind energy in Minnesota are significant and well-known. The state has long been a national leader in clean energy, and is poised to continue that trend with nearly 20 percent of electricity generation from wind alone. However, if adopted, Judge Schlatter’s recommendation would have far-reaching implications that would threaten current wind farms and the continued deployment of wind in Minnesota. This would hinder the state’s ability to meet its greenhouse gas reduction goals, to continue growing its clean energy economy, and to protect the health of its citizens. MCEA urges the Public Utilities Commission to reject Judge Schlatter’s recommendation and approve the Freeborn Wind project.

¹² In 2017, nearly 18 percent of the electricity generated in the state was from wind, an increase of 9 percent from the year before. Mark Steil, “Wind Power Growing in Minnesota, and Around U.S.,” MPR News (August 8, 2017), *available at* <https://www.mprnews.org/story/2017/08/08/wind-power-growing-in-minnesota-and-around-us>.

¹³ *See, e.g., In the Matter of the Further Investigation into Environmental and Socioeconomic Costs Under Minnesota Statutes Section 216B.2422, Subdivision 3*, “Findings of Fact, Conclusions, and Recommendations: Criteria Pollutants”, E-999/CI-14-643 at 94 (A. 8-9), 95 (B. 13), 106 (“[G]iven InMAP’s lack of peer review and track record, the Administrative Law Judge cannot recommend it.”) (June 15, 2016).

¹⁴ In particular, MCEA supports Freeborn Wind Proposed Findings of Fact and Conclusions of Law at 24-25, Nos. 132, 136, 137, 139, 141, and 142.

Sincerely,

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