



June 8, 2018

Daniel Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, Minnesota 55101-2147

**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  
Freeborn County, MN  
Docket No. IP-6946/WS-17-410**

Dear Mr. Wolf:

The Minnesota Conservative Energy Forum (“MNCEF”) respectfully submits these comments and exceptions to the Administrative Law Judge’s May 14, 2018 Findings of Fact, Conclusions of Law, and Recommendations (“Report”).<sup>1</sup>

MNCEF is a 501(c)3 organization that educates the public and elected officials on the importance of an “all of the above” energy policy. We believe that market-based energy policies will free consumers, create jobs, and modernize the electricity market, not to mention creating economic activity for Minnesota. Wind, solar, and energy efficiency will all be part of that future and will help free Minnesota customers by adding technologies to the solution mix. This provides customers with options outside of the over-regulated, monopoly-centric model we currently enjoy.

MNCEF submits these comments because we believe the Report contains incorrect conclusions of law, a lack of respect for property owners committed to hosting wind farms on their land, and the need for the issues under consideration to be resolved at the legislature. The inability to solve these issues correctly will harm faith in the legislative and regulatory process, damage Minnesota’s economy, and affect the growing and successful wind industry in Minnesota.

### **The Report Incorrectly Interprets Minnesota Noise Laws**

The Minnesota Public Utilities Commission (“MPUC”) should reject the Report because it misinterprets Minnesota law and the ruling fails to follow any recommendations from expert testimony. The Report disregards the current interpretation of the rule governing Minnesota’s noise standards<sup>2</sup> and instead redefines the standard to regulate “total noise” at a testing site so that all sources of noise can’t exceed the nighttime L50 requirement of 50dB within the Noise Area Classification 1. This interpretation is inconsistent with current practice and is an impractical standard to enforce.

State law defines noise,<sup>3</sup> “as any sound not occurring in the natural environment, including, but not limited to, sound emanating from aircraft and highways, and industrial, commercial, and residential sources.” Any limits on noise from a single source excludes background, or ambient, noise defines as “all noise sources other than the main source of concern.”

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<sup>1</sup> Freeborn Wind Energy, LLC, OAH 80-2500-34633, MPUC IP-6946/WS-17-410

<sup>2</sup> Minn. R. 7030.0040 (2017).

<sup>3</sup> Minn. Stat. §§ 116.07 subd. 2(c) and 111.06 subd. 15 (2017).



Under current Minnesota Pollution Control Agency (“MPCA”) guidance, wind farms are in compliance as long as any noise exceedances can be attributed to background noise. The MPCA follows state statutes and provides a fair system for ensuring wind turbines are as quiet as possible while allowing for variations in background noise. Wind farms can be designed to meet the current sound thresholds and have been found in compliance with the current noise standards.

This new standard would cause confusion and is not even the ideal solution as requested by opponents. In order to apply the standard as laid out in the report, sound would need to be recorded on a constant basis to ensure all noise remains below the current noise standards, and a new regulatory regime would need to be developed in order to determine the different noise sources. This new standard is impractical, creates more confusion, and would harm Minnesota’s business climate and make it more difficult to develop new wind farms.

### **The Report Ignores the Property Rights of Willing Landowners**

The Report attacks the property rights of willing landowners and developers who agreed to bring a wind farm to Freeborn County. MNCEF believes it is important to protect property rights and the ability for landowners to dispose with their land as they choose. The Report makes clear that the people leasing their land to the project and neighbors were provided every opportunity to understand the project. No landowners have backed out from agreements with the project, and the nearby residents were afforded notice and the ability to comment as prescribed under law. Further, the Report admits that the project will have both short and long-term benefits to the local economy.

Instead of defending property owners, the Report seeks to deprive tax paying citizens of their rights based on flimsy evidence and Not In My Backyard thinking. Freeborn Wind presented evidence that their wind project falls within the current acceptable noise standards. Without data to contradict the Freeborn Wind expert the Report rejected the findings as conservative. The Report based its claims on evidence that lacked an expert opinion in support, and on witnesses unavailable for cross examination. Without scrutiny of the claims made by intervenors in this case it is inappropriate to create an entirely new noise standard.

### **The Issues Under Consideration Are Best Addressed at the Legislature**

The Report claims that the current standard is inappropriate for regulating Wind Farms. The Report cites MPCA comments that the current standard was not created specifically to address wind farm siting and claims that the standard is inappropriate because it fails to address low frequency and infrared noise. This proceeding is the inappropriate place to address the Administrative Law Judge’s opinion that the current noise standard is insufficient. Instead, the issue should be addressed at the legislature, where public hearings will produce a more substantial record, and laws can be passed that will adequately address public health needs.

The Report exceeds its jurisdiction and by doing so weakens the trust people place in their government institutions. If a small minority can avoid the legislature and appeal to sympathetic judges, citizens will no longer trust that their numerous interests are taken into account or that their elected officials can address their concerns. Minnesota needs a process that addresses citizen concerns but at the same time promotes a business-friendly regulatory environment with clear, easily enforceable rules that treats all noise emitters equally and fairly. The ALJ’s report attempts to legislate a new regulatory standard, and therefore should be rejected by the MPUC.



Thank you for the opportunity to submit these comments and exceptions to the Administrative Law Judge's May 14, 2018 Findings of Fact, Conclusions of Law, and Recommendations in Docket No. IP-6946/WS-17-410.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Morgan".

Nick Morgan

Program Director, Minnesota Conservative Energy Forum

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