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June 8, 2018

VIA ELECTRONIC FILING

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E, Suite 350
St. Paul, Minnesota 55101

Re: Freeborn Wind Farm, Freeborn County, Minnesota - Exceptions to ALJ Report
Docket Nos. IP-6946/WS-17-410

Dear Mr. Wolf:

On May 15, 2018 the Public Utilities Commission issued a Notice of the Exceptions Period for the Administrative Law Judge Report (ALJ Report) for the Freeborn Wind Farm. Pursuant to Minn. Stat. § 14.61, subd. 1, and Minn. R. 78292700 a 15 day exceptions period was established, making exceptions to the ALJ Report due on May 29, 2018.

Renewable Energy Systems Americas Inc. (RES), respectfully submits these 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 ("Report"). The noise-related Finding Nos. 177-247 of the Report should be rejected because they misinterpret Minnesota law.

The Report's Finding Nos. 204, 206 and 245 suggest that Minnesota's Noise Standard regulates "total noise" at a receptor such that noise from all sources cannot exceed a nighttime L50 within the Noise Area Classification 1. This interpretation is inconsistent with Minn. Stat. §§ 116.07, subd. 2(c) and 116.06, subd. 15, and guidance from the Minnesota Pollution Control Agency ("MPCA") and Minnesota Department of Commerce ("MDOC") *Guidance for Developing and e-Filing the LWECs Noise Study Protocol and Report Submittals to the Minnesota Public Utilities Commission and Application Guidance for Site Permitting of Large Wind Energy Conversion Systems in Minnesota*. This interpretation, if adopted, is a departure from how the Noise Standard has been applied in other wind project permitting and compliance proceedings throughout Minnesota.

Minnesota law establishes limits on sources of noise. Noise is defined "as 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."¹ The limit on "noise" created by a "source" excludes "background, or ambient, noise" which is defined as "all noise sources other than the noise source of concern."²

The MPCA provides guidance on the implementation of its Noise Standards and how to measure total noise and then separate the "source" noise from "background noise" to determine compliance.³ If the Noise Standards were intended to set a "total noise" level which could not be exceeded, as the

¹ Minn. Stat. § 116.06, subd. 15.

² See, e.g., "A Guide to Noise Control in Minnesota; Acoustical Properties, Measurement, Analysis and Regulation," MPCA (November 2015) available at: <https://www.pca.state.mn.us/sites/default/files/p-gen6-01.pdf> (accessed March 8, 2018) [hereinafter "MPCA Guide"].

³ See, e.g., MPCA Guide.

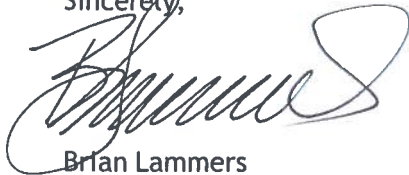
Report suggests, there would be no need for MPCA to establish protocols for separating the “noise source” from “background noise.”

To date, Minn. Rule 7030.0040, subp. 2, has been applied as requiring a wind farm project layout to adhere to a 50 dB(A) L50 maximum noise limit at residences. The 50 dB(A) L50 does not include background noise but is limited to the source. A wind farm developer does not have the ability to control background noise, but can design a wind turbine layout that meets the 50 dB(A) L50 requirement. Minnesota wind farms have been found to be in compliance with Minnesota Noise Standards when the wind farm noise levels have been at or below the standards required by Minn. Rule 7030.0040, subp. 2.

Moreover, it is entirely impractical to apply the Noise Standards to limit “total noise” since background noise fluctuates hour-to-hour and day-to-day. Such an interpretation also presents an impractical regulatory scheme where it is nearly impossible to determine which “source” is the cause of an exceedance. Effectively regulating noise sources requires a methodology and standard that isolates the noise source of concern from other sources of noise. This interpretation of the Noise Standards presents a nearly impossible regulatory compliance challenge for wind projects because ambient sound levels could approach or even exceed 50 dB(A) at times due to agricultural activities, highway noise or other ambient sources, thereby creating an existential challenge to siting wind projects in Minnesota.

In addition to concerns over the Report’s interpretation of the Noise Standards, RES also takes exception to the Report’s heavy reliance on reports submitted through public comment that were not sponsored by experts and whose authors were not available for cross examination. For example, when discussing infrasound, the Report cites extensively from Keith Stelling, Michael Nissenbaum, Alec N. Salt, Jeffery Lichtenhan, Jerry Punch, Richard James, and Paul Schomer.⁴ None of these individuals testified at the hearing, nor was their work relied upon by an expert witness. In fact, work produced by these individuals regularly appears in the library of documents promoted by anti-wind organizations such as National Wind Watch.⁵ The strength of the wind energy siting process in Minnesota is the ability, through the Public Utility Commission proceedings, to evaluate and incorporate expert information from various departments within the state (MPCA, MDOC, etc.) as well as expert testimony during the proceedings. The full record of these proceedings and the information from state experts should be the basis for findings and decisions from the Commission. We encourage the Commission to reconsider this interpretation of the Noise Standards in light of the consequences for compliance from all existing and future wind projects in Minnesota.

Sincerely,



Brian Lammers
Regional Vice President, Development

⁴ See, e.g., Report at n. 274, 275, 276, 292, 293, 298.

⁵ See, e.g., <https://www.wind-watch.org/documents/author/?a=>