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June 8, 2018

—Via Electronic Filing—

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

RE: LETTER REGARDING FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE
IN RE APPLICATION OF FREEBORN WIND ENERGY LLC FOR A LARGE
WIND ENERGY CONVERSION SYSTEM SITE PERMIT IN FREEBORN COUNTY
DOCKET NO. IP-6949/WS-17-410

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits this brief letter in support of Freeborn Wind Energy LLC's application for a site permit.

As the Commission knows, Freeborn is one of the projects comprising the Company's 1,550 MW Portfolio that was approved by the Commission in Docket No. E002/M-16-777. While the project is currently owned by Freeborn Wind Energy LLC and is being developed by Invenergy LLC, Xcel Energy has signed a Purchase and Sale Agreement for the project. The closure of that transaction is subject to a number of conditions, including various regulatory and permitting approvals such as the one presently before the Commission.

Although not a formal party to this docket, we felt compelled to file these brief comments because the ALJ's Findings of Fact, Conclusions of Law and Recommendation ("Report") raise a critically important issue for wind development in Minnesota—namely the interpretation and application of Minnesota's Noise Standards. The ALJ Report adopts an interpretation of the Noise Standards that would establish a bright-line limit on "total noise" at a receptor. This limit would include not only noise from the source at issue (here, wind turbines) but also all background or ambient sound combined with the

source at issue. It would also prohibit the operation of a wind project altogether anytime the background sound by itself exceeded the stated limit. Like Freeborn Wind Energy LLC, we believe this interpretation is inconsistent with Minnesota statutes, MPCA’s guidance on applying the Noise Standards, and prior Commission and industry practice. We also believe it could negatively impact not only the Freeborn project but many other wind projects across the state, as well as the industry more generally. We briefly address each of these concerns below.

The Noise Standards were adopted by the Minnesota Pollution Control Agency pursuant to Minnesota Statute § 116.07, subd. 2(c), which provides that MPCA “shall also adopt standards describing the maximum levels of noise in terms of pressure level that may occur in the outdoor atmosphere . . .” (emphasis added). Importantly, “noise” is specifically defined by Minnesota Statute 116.06, subd. 15, which defines it as “any sounds not occurring in the natural environment, including, but not limited to, sound emanating from aircraft and highways, and industrial, commercial, and residential sources” (emphasis added). In other words, the Noise Standards were adopted by MPCA pursuant to a statute that specifically excludes “sounds . . . occurring in the natural environment.” We therefore believe that the ALJ’s interpretation in this case—which combines noises occurring in the natural environment with the noise emanating from the source in question—is inconsistent with MPCA’s enabling statute.

In fact, MPCA’s own Guide to Noise Control specifically addresses how to isolate the noise from a particular source relative to all other background sound in order to determine compliance:

In certain instances, when a single noise source is analyzed along with other noise sources, correction factors can be used to isolate the noise source being monitored and calculate its individual noise level. This is done by measuring and recording the total noise level of all sources. Next, the noise source to be isolated is turned off and a noise level reading is taken with all the other existing noise sources in operation. The background noise level is then subtracted from the total noise level. The result is used in conjunction with the following background noise correction chart (Figure 8) to find the approximately noise level of the source. (emphasis added).¹

¹ 2015 MPCA Noise Guide at 12.

The ALJ's adoption of a "total noise" bright-line limit is incompatible with this guidance, as it would make the concept of isolation meaningless. And to be clear, when Freeborn's turbine-related noise is isolated from the existing background sound in the area and evaluated pursuant to MPCA's guidance, there is no dispute that the project complies with the Noise Standards.

The ALJ's interpretation also departs from prior Commission practice, which has always involved isolating the noise source at issue from the surrounding ambient or background noise to determine compliance. As noted by Freeborn Wind Energy LLC, the Commission has accepted multiple post-construction noise monitoring reports from other Minnesota wind projects where project-specific noise was compliant but background sounds at times exceeded the 50 dBA limit. As just one example, we note that the Post-Construction Noise Study Report for the Prairie Rose Wind Farm stated as follows:

As demonstrated during pre-construction noise measurement, existing sound levels in the Project area already exceeded MPCA noise limits. Therefore, determining the contribution of Project-related noise plays a large role in determining compliance with MPCA.²

If adopted by the Commission, the ALJ's new interpretation could have a dramatic impact on both future wind development and currently operating projects in Minnesota. Wind-rich areas like Freeborn County often experience background sounds in excess of the lowest 50 dBA limit due primarily to wind blowing through surrounding vegetation. To prohibit the development of wind projects in these areas because background wind noise itself exceeds a certain threshold would jeopardize some of the most economically advantageous projects across the state and almost certainly chill wind development in our state. We also believe this interpretation could pose significant challenges for industry and manufacturing generally, as no noise-generating activity could occur at time when the surrounding background noise exceeded the applicable Noise Standards.

For all of these reasons, we encourage the Commission to adopt Freeborn Wind Energy LLC's requested revisions to the ALJ's Report. We believe that the Noise Standards have been consistently applied in past dockets in a way that balances the interest of landowners and neighbors alongside the interests of the state in developing economic renewable projects. We likewise believe that adopting the

² *In the Matter of the Application of Prairie Rose Wind Farm for a LWECs Site Permit for the 200 MW Prairie Rose Wind Farm*, Dkt. No. IP-6843/WS-10-425, November 2013 Post-Construction Noise Study Report at 15-16.

ALJ's interpretation in this docket would upend that balance in a way that could significantly affect Minnesota's standing as a leader in wind energy.

That all said, we note that Freeborn is a somewhat unique project in that it straddles both Iowa and Minnesota. To the extent that the Commission cannot conclude that the record in this docket supports a finding of compliance, we believe there is a path for moving forward with the project. However, this would involve a substantial shift of both wind turbines and investment dollars from Minnesota to Iowa. It may also require changes to our operational parameters for the project that could negatively impact energy production and overall economics for the project. We therefore do not believe these changes are in the best interests of our customers or the State. Nor do we believe they are required by an accurate reading of Minnesota law, Minnesota's Noise Standards, and MPCA's relevant guidance. However, to the extent the Commission is inclined to take this path, we would respectfully request that it order Freeborn Wind Energy LLC to submit a compliance plan; refrain from adopting the ALJ's interpretation at this time; and allow interested stakeholders to work with MPCA and the Department of Commerce on a framework for applying the Noise Standards in a consistent manner going forward.

We have electronically filed this letter and copies have been served on the parties on the attached service list. Please contact me at (612) 215-5331 or amanda.rome@xcelenergy.com if you have any questions regarding this filing.

Sincerely,

/s/

AMANDA J. ROME
MANAGING ATTORNEY, FEDERAL & STATE REGULATORY

Enclosures
c: Service List

CERTIFICATE OF SERVICE

I, Jim Erickson, hereby certify that I have this day served copies or summaries of the foregoing documents on the attached list(s) of persons.

xx by depositing a true and correct copy thereof, properly enveloped
with postage paid in the United States Mail at Minneapolis, Minnesota

or

xx electronic filing

Docket No. IP-6946/WS-17-410

Dated this 8st day of June 2018

/s/

Jim Erickson
Regulatory Administrator

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