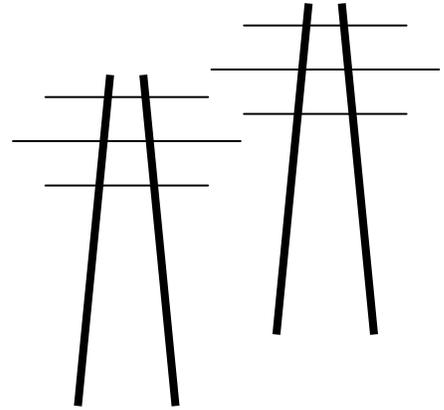


## Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617  
Energy Consultant—Transmission, Power Plants, Nuclear Waste  
overland@legalelectric.org

1110 West Avenue  
Red Wing, Minnesota 55066  
612.227.8638



# ANOTHER LATE FILING

September 19, 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 REPLY TO YET ANOTHER LAST MINUTE FREEBORN FILING  
MPUC Docket: IP-6946/WS-17-410

Dear Mr. Wolf:

On behalf of Association of Freeborn County Landowners, please find this response to the last minute “Late Filed – Proposed Special Conditions Related to Noise” offered just now by Freeborn Wind in the above-entitled docket.

Association of Freeborn Landowners requests that the Freeborn Wind dockets be taken off Thursday’s agenda and rescheduled for another day after resolution of Freeborn Wind’s filings this week. Further, AFCL requests that the Freeborn Wind siting permit should be referred back to OAH for rehearing pending Freeborn Wind’s provision of modeling and/or mitigation and its revised site plan.

Freeborn Wind has had since May 14, 2018, the date of the ALJ’s Recommendation, to perform modeling, to revise the site plan, and propose “mitigation” and it has done NOTHING. Note that Freeborn was able to provide the “ambient + wind” noise modeling requested by the ALJ in just one week (though after the hearing had ended).

Freeborn admits in its letter the “specific guidance and requirements for pre-construction noise

modeling,” and Freeborn offers to “submit updated modeling and/or proposed mitigation demonstrating that modeled wind turbine-only noise will not exceed 47 dB(A) L<sub>50</sub>-one hour at receptors.”

The offer of a “special condition” is somewhat similar to the ALJ’s Recommendation alternative, to the extent that Freeborn be allowed time to demonstrate that it can comply with the standards, but the timing is backwards. The ALJ’s Recommendation was that it not be a condition of the permit, but that it be a condition precedent, not subsequent condition – that the permit decision be delayed until Freeborn can demonstrate probable compliance, and only if that demonstration shows probable compliance should the permit be issued.

Procedurally, this proposal is problematic, because if the permit were to be granted with a condition of submission of modeling, there would be no opportunity to review, no information requests, no cross-examination. It was in cross-examination that the flawed noise modeling was brought to light, and it was the post-hearing ambient noise + wind noise modeling (without information requests and cross-examination) that brought the potential to violate noise standards to light. This last minute proposal to permit the project with a post-permit condition of submission of modeling is prejudicial to intervenors and the general public (and I would think Commerce, the agency charged with enforcement of permit conditions).

Further, the notion of “and/or proposed mitigation” is disturbing, because there is no practical way to mitigate noise once a turbine is up. “Mitigation” in Bent Tree was buyout of two families who had complained for 7+ years about noise. The modeling and /or proposed mitigation needs to be provided BEFORE any permit is issued. “Mitigation” can also mean “move to Iowa,” because we’ve been told multiple times that alteration of siting in Minnesota is not possible, there is no room to move any turbines. “Mitigation” with movement of turbines to Iowa changes the site plan, and an alteration in site plan must not be permitted without opportunity for review by all parties, cross-examination, etc. – a change in site plan requires rehearing.

Freeborn Wind states that 3 dB(A) “is the generally recognized minimum detectable change in environmental noise levels.” However, 3 dB(A) is also a DOUBLING of sound pressure levels. Hankard, Tr. p. 64, l. 25 – p. 65, l. 2-8. 3 dB(A) is also the margin of error Hankard used in his modeling, the standard in ISO 9613-2. Hankard, Tr. p. 64, l. 17-24.

Freeborn wind also references “the MPCA’s 2015 Noise Guide.” That is not in the record. It is available online.<sup>1</sup>

In short, the Commission should not permit this project BEFORE these issues have been nailed down. The ALJ’s Recommendation was clear that no permit should be issued until Freeborn has demonstrated that it can comply with noise standards:

**The Administrative Law Judge concludes that Freeborn Wind has failed to demonstrate that the proposed Project will meet the requirements of Minn. R. 7030.0040, the applicable Minnesota Noise Standards. Therefore, the Administrative Law Judge respectfully**

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<sup>1</sup> See <https://www.pca.state.mn.us/sites/default/files/p-gen6-01.pdf>

**recommends that the Commission either deny Freeborn Wind's Application for a Site Permit, or in the alternative, provide Freeborn Wind with a period of time to submit a plan demonstrating how it will comply with Minnesota's Noise Standards at all times throughout the footprint of the Freeborn Wind Project.**

ALJ Recommendation, p. 2, see also final Recommendation, p. 119.

Note the order of things in the Conclusions of Law – the Conclusion that the project would meet legal requirements only if it demonstrates it can comply with noise regulation:

**9. Should the Applicant demonstrate that it can meet the requirements of Minn. R. 7030.0040, the Project, with the Draft Site Permit conditions and the amended and additional Permit Conditions and Special Conditions to sections 4.2, 5.2, 5.2.25, 7.2, 7.4, and 11.1, as described at paragraphs 543 through 550 of this Report, would satisfy the site permit criteria for an LWECS in Minn. Stat. §216F.03 and meet all other applicable legal requirements.**

ALJ Recommendation, p. 118, Conclusion 9 (emphasis added). Note the tense of that language – future tense – that the requirements have not been met UNTIL the demonstration occurs, and that demonstration has NOT occurred. A condition is not a demonstration.<sup>2</sup>

ALL parties need time to respond to this request. Reviewal of transcripts (in Albert Lea or St. Paul) specifically Hankard's testimony, pre-filed testimony, post-hearing Hankard testimony, and the ALJ Recommendation is all necessary to adequately respond. The appropriateness and validity of this last minute proposal is questionable and needs to be reviewed.

AFCL again requests that the Freeborn Wind dockets be taken off Thursday's agenda and rescheduled for another day after resolution of Freeborn Wind's filings this week. These last minute late filings demonstrate that this project is not ready for deliberation and a decision. Further, the Freeborn Wind siting permit should be referred back to OAH for rehearing pending Freeborn Wind's provision of modeling and/or mitigation and its revised site plan.

Very truly yours,



Carol A. Overland  
Attorney at Law

cc: Association of Freeborn County Landowners

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<sup>2</sup> Procedurally, this would be as improper as Commerce and the Commission's practice of allowing applications to proceed, incomplete, without the decommission plan information required by Minn. R. 7854.0500, Subp. 13, and not addressing decommissioning specifics until after a permit is granted, thereby avoiding public verification and review in the contested case.

**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**

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**CERTIFICATE OF SERVICE**

**ASSOCIATION OF FREEBORN COUNTY LANDOWNERS**

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

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

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I, Carol A. Overland, hereby certify that I have this day eFiled the attached Reply to Freeborn Wind's Motion to Exclude and served parties via eService.



September 19, 2018

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Carol A. Overland      MN #254617  
Attorney for Association of Freeborn  
County Landowners  
Legalelectric – Overland Law Office  
1110 West Avenue  
Red Wing, MN 55066  
(612) 227-8638  
[overland@legalelectric.org](mailto:overland@legalelectric.org)