

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

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

**FIRST
PREHEARING ORDER**

A prehearing conference was held before Administrative Law Judge LauraSue Schlatter on September 14, 2017, at the Minnesota Public Utilities Commission, Small Hearing Room, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Christina Brusven, Fredrickson & Byron, P.A., appeared on behalf of the Applicant, Freeborn Wind Energy, LLC (Freeborn Wind or the Applicant). Ms. Brusven was accompanied by Dan Litchfield, Senior Manager for Project Development for Freeborn Wind, LLC and its parent company, Invenergy, LLC.

Carol Overland, Attorney at Law, Legalectric, Inc., appeared on behalf of the Association of Freeborn County Landowners (AFCL). Also present were AFCL members Dorenne and Mike Hansen, Allie Olson, and Donna Mittag.

Linda Jensen, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA). Rich Davis and Louise Meltich appeared for the staff of the EERA.

Mike Kaluzniak appeared for the staff of the Public Utilities Commission (PUC or Commission).

Also present was Dan Belschan, Commissioner, Freeborn County Board of Commissioners.

Based upon the record and the discussion among the participants at the prehearing conference, the Administrative Law Judge makes the following First Prehearing Order:

IT IS HEREBY ORDERED:

I. Governing Rules

1. The contested case proceedings will be conducted in accordance with the Minnesota Rules of Professional Conduct, and the Professionalism Aspirations approved and endorsed by the Minnesota Supreme Court.

2. The procedural rules at Minnesota Rules, chapter 1405 (2017) govern the proceedings in this docket. To the extent that they are consistent with chapter 1405, Minnesota Rules, chapters 7854 and 7829 (2017) shall also apply. To the extent that the foregoing rules are silent as to procedure, the Administrative Law Judge will rely on Minn. R. 1400.5010-.8400 (2017) for the contested case portion of this docket.

II. Intervention and Public Participation

3. The Applicant was the only party to this matter named in the Commission's August 31, 2017, 2015 Notice and Order for Hearing. The AFCL filed a Petition to Intervene seeking full party status on September 1, 2017, which was granted in an Order dated September 12, 2017.

4. As of the date of the prehearing conference, no additional Petitions to Intervene had been filed.

5. It is not necessary to be an intervenor or party to participate in these proceedings. Members of the public may submit written comments during the comment periods, appear at all hearings and forums, and participate in the public hearing. The public hearing will provide an opportunity for individuals and groups to present evidence and argument on the issues in this case, and to question all persons testifying. Members of the public:

- (1) may offer testimony without or without the benefit of oath or affirmation;
- (2) are not required to pre-file their testimony;
- (3) may offer testimony or other material in written form, at or following the hearing;
- (4) may question any person testifying or who has offered pre-filed testimony, either directly or by submitting questions to the Administrative Law Judge, who will then ask the questions of the witness.

6. Oral testimony or written testimony provided without benefit of oath or affirmation, and which is not subject to cross-examination, shall be given such weight as the Administrative Law Judge deems appropriate.¹

¹ Minn. R. 1405.0800.

7. All persons may be represented by legal counsel, but such representation is not required.

8. Persons who wish to intervene in this proceeding must file a Petition to Intervene with the Administrative Law Judge no later than **December 11, 2017**. Such Petition to Intervene must comply with Minn. R. 1405.0900. A Notice of Appearance shall be filed with the Petition. Petitioners shall also provide an email address on the Petition or Notice of Appearance. Any objection to a petition shall be filed within seven days of the filing of the Petition. The Petition shall be served upon all existing parties and the Commission.

III. Service List

9. A copy of this First Prehearing Order shall be served according to the service list maintained by the Commission. Thereafter, the service list shall be established by the Administrative Law Judge and the Office of Administrative Hearings (OAH List). The OAH List shall include the parties, Commission staff, the court reporter, and representatives for the EERA. All documents filed in this contested case proceeding shall be served in accordance with the OAH List.

10. Members of the public may receive notices of all filings and access to all public documents filed in the case by subscribing to the docket on the Commission's eDockets system: <https://www.edockets.state.mn.us/EFiling/security/login.do?method=showLogin>. To subscribe, enter the docket number of this action (17-410). Upon subscribing to the docket, you will be provided with electronic notice of all filings, as well as access to the public documents filed in the case.

IV. Schedule

11. The following schedule is adopted:²

Document or Event	Due Date
Prefiled Direct Testimony of all Parties Admitted by November 6, 2017	December 5, 2017
Intervention Deadline	December 11, 2017
Rebuttal Testimony for Parties Admitted by November 6, 2017; and	January 8, 2018

² The schedule is adopted based on the assumption that the Commission's Order Issuing a Draft Site Permit will be issued in late November 2017. Depending on the timing of the Commission's Order Issuing a Draft Site Permit, the parties and the Administrative Law Judge may adjust this schedule, allowing for additional time, if needed.

Direct Testimony for Intervenors Admitted after November 6, 2017	
Status Conference	January 9, 2018 at 1:30 p.m.
At least 10 days prior to Hearings	Service of Notice of Hearings
Surrebuttal, All Parties	January 22, 2018
Public Hearing, including public questioning of party witnesses	January 29, 2018, Albert Lea, MN time TBD
Evidentiary Hearing	February 6-7, 2018, place TBD 9:00 a.m.
Deadline for Public comments on site permit	February 19, 2018
All Parties' Initial Briefs due Applicant Findings of Fact due	March 6, 2018
All Parties' Reply Briefs due Intervenor/Agency Findings of Fact due	March 21, 2018
Administrative Law Judge Report	April 23, 2018

V. Publication of Hearing Schedule

12. Freeborn Wind shall work with Commission staff and the Administrative Law Judge to insure that at least ten days' notice of the public and evidentiary hearings is provided by the Commission, as required by Minn. R. 7854.0800, subp. 4 (2017).³ Such notice shall include delivery to all affected landowners.⁴

VI. Discovery

13. A party may serve requests for information on any other party. All requests for information shall be made in writing by electronic mail. If expressly requested by another party, the requesting party shall follow the electronic mail message with a copy of the request sent by regular U.S. mail or other delivery service to all parties.

³ Order Finding Application Complete and Varying Time Limits; Notice and Order for Hearing at 8 (Aug. 31, 2017).

⁴ *Id.*

14. Information requests shall **NOT** be e-Filed or served on the Administrative Law Judge or the court reporter. Additionally, responses to information requests shall **NOT** be e-Filed or served on the Administrative Law Judge or court reporter.

13. Other than a request by a government agency, to the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (2016), the providing party may require that the requesting party comply with the terms of any Protective Order approved in this matter before providing the information. If no such Protective Order has been issued by the Administrative Law Judge, the affected parties shall first seek approval of a Protective Order. A request containing such material shall only be between the requesting party and responding party, and the requesting party shall follow the electronic mail message with a public version of the request sent by regular U.S. mail or other delivery service to all parties. Requests shall be sent to the person designated by a party to receive data requests, if such a person has been identified. Any request received by electronic mail or other means after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday, is considered received on the next business day.

14. The party responding to the information request shall provide the requested information to the requesting party within **eight (8) business days** of receipt of the information request. A business day does not include a weekend day or a Minnesota state holiday. In accordance with Minn. R. 1405.0700, the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 p.m. on a business day, the following business day is also not counted in the calculation of the eight-day response period.

15. Public and Nonpublic responses to information requests shall be submitted by electronic mail message. If expressly requested by another party, the responding party shall follow the electronic mail message with a copy of the response sent by regular U.S. mail or other delivery service. Any response received after 4:30 p.m. is considered to be received the following business day.

16. If the responding party is unable to send the response by electronic mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery service so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize optical data storage (flash drives) to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

17. If the responsive information cannot be supplied within eight (8) business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline to explain reasons for not being able to supply the

information. The responding party shall attempt to work out a schedule of satisfactory compliance with the requesting party.

18. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions shall be e-Filed through the eDockets system. A courtesy copy of the motion papers shall be submitted to the Administrative Law Judge by electronic mail. Notice of such motions will be made by electronic mail. Motions to address discovery requests and responses will usually be heard by telephone conference.

VII. Pre-filed Testimony

15. By **4:30 p.m.** on **January 25, 2018**, each party shall prepare and file a **Proposed Exhibit List** identifying all documents (including pre-filed testimony) that the party intends to offer into the hearing record. The court reporter will e-mail a Microsoft Word template to all parties to use in preparing this document. Also by **4:30 p.m.** on **January 25, 2018**, the parties shall provide a **courtesy copy** of their Proposed Exhibit Lists to the Administrative Law Judge via e-mail at laurasue.schlatter@state.mn.us and to the court reporter at jshaddix@janetshaddix.com.

16. Each party shall mark its pre-filed testimony and offer it for admission into the record at the first hearing. Each party shall provide one paper copy of each exhibit for the Administrative Law Judge and a second paper copy of each exhibit for the court reporter.

17. The front page of each exhibit shall be pre-marked, as follows:

- (1) An exhibit number, using the appropriate exhibit prefix, followed by a sequentially assigned number, beginning with "1". The exhibit number shall be displayed in the lower right-hand corner of the first page of the exhibit. Exhibit prefixes are:
 - (a) Freeborn Wind exhibits FR-
 - (b) AFCL exhibits AFCL-
 - (c) EERA exhibits EERA-
- (2) The eDocket unique identifier, taken from the eDocket list when the document is electronically filed. The eDocket unique identifier shall be displayed in the upper right-hand corner of the first page of the exhibit.

18. Except for good cause shown, all revisions or corrections to any pre-filed testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the public hearing.

Corrections to any pre-filed testimony shall be identified and marked on the paper copy of the exhibit which is entered into the hearing record.

19. Pre-filed testimony that is not offered into the record, or stricken portions of pre-filed testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Any new affirmative matter that is not offered in reply to another party's rebuttal testimony and exhibits will not be allowed in surrebuttal testimony and exhibits.

20. Except for good cause shown, objections by any party relative to the qualifications of a witness or to that witness' direct or rebuttal testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than **January 12, 2018**, with respect to direct and rebuttal testimony. With respect to surrebuttal testimony and witnesses, the deadline shall be **January 25, 2018**.

VIII. Order of Testimony

21. The tentative order of testimony in the evidentiary hearing shall be: Freeborn Wind, AFCL and any other intervenors granted party status, in the order of intervention. The EERA will then summarize its recommended draft site permit. Questioning of the witnesses shall proceed in the same order, followed by Commission Staff and the Administrative Law Judge. This provision is subject to change by agreement of the parties or further order of the Administrative Law Judge. Each party shall advise other parties and the Administrative Law Judge of the order in which it will call witnesses for cross examination no less than 48 hours before the witness is called to testify.

22. If a sponsoring party needs a day certain to offer the testimony of a witness, the sponsoring party should submit a request to the Administrative Law Judge and other parties.

IX. Subpoenas

23. Requests for subpoenas to compel the attendance of a witness or for the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1405.1300. The subpoena request shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought and shall identify any documents sought with specificity. The request shall also include the full name and home or business address of each person to be subpoenaed and, to the extent known, the date, time, and place for responding to the subpoena. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at <https://mn.gov/oah/forms-and-filing/forms/>.

X. Hearings

24. The public hearing shall be held on **January 29, 2018** in Albert Lea, Minnesota. The evidentiary hearing shall be held on **February 6-7, 2018** at a location to be determined.

25. Each party shall provide five copies of the pre-filed testimony of each of its witnesses for review by the public at the public and evidentiary hearings. Testimony that is identified as Trade Secret or Nonpublic need not be provided. Freeborn Wind shall also provide five copies of its Application for a Site Permit and the EERA shall provide five copies of its Recommendation for a Draft Permit.

26. Each witness who offers pre-filed testimony must be available for questioning by interested persons at each of the hearings. If a witness cannot be available throughout the hearing process, the witness' sponsoring party shall request the Administrative Law Judge for an exemption from this requirement before the publication of the Notice of Hearing. The written request shall meet the requirements of Minn. R. 1405.2000.

27. At the start of the public hearing, the Administrative Law Judge will give a short introduction. This will be followed by presentations by Commission staff, the Applicant, the AFCL, and the EERA each explaining their roles in the site permitting process. These presentations will be limited to ten minutes each. The Applicant, and the AFCL may then each take up to an additional five minutes each to briefly summarize their pre-filed testimony.

28. Following these introductions, the public hearings will open for comments and questions by the public. There will be a sign-up sheet available outside the hearing room. Members of the public who wish to speak will be required to sign up on the sign-up sheet. Members of the public will be called in the order that they sign up on the sign-up sheet. Depending on the number of individuals who wish to speak, the Judge may place a time limit on speakers. Members of the public will be reminded that they may submit written comments as exhibits into the hearing record, or file comments with the Commission.

29. Public hearings will adjourn with the last speaker, even if it is prior to the stated hearing end time. Therefore, members of the public who wish to speak should arrive at the beginning of the public hearing and put their names on the sign-up sheet. To the extent practicable, the public hearings will end at the stated end time, but may be extended, depending on the number of individuals wishing to provide comment.

30. All parties to this action, including intervenors, shall withhold their questioning of witnesses until the evidentiary hearing. Public hearings shall be used for the public to ask questions, cross-examine witnesses, and present comment. Individual members of a party organization or group may be permitted to question a witness at the public hearing provided that the individual's question is outside the scope of the party organization or group's representation.

31. At the evidentiary hearing, parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through one representative chosen by the party.

32. A second prehearing conference shall be scheduled between January 9, 2018, and January 12, 2018, at a time that is convenient for the parties and the Administrative Law Judge. The purpose of the second prehearing conference will be to discuss final details related to the public and evidentiary hearings.

XI. Filing of Documents (Excluding Information Requests and Responses)

33. Documents shall be filed using the Commission's eDockets e-Filing system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3 (2016), and the Commission's standards. In any instance where the e-Filing system cannot be used, the document shall be filed by delivery or mail with the Administrative Law Judge. Pre-filed testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

34. An oversized exhibit may be received into the hearing record, with approval of the Administrative Law Judge, provided that a duplicate original of the exhibit conforming to the standards of Minn. R. 1400.5275, is submitted into the record and e-Filed.

35. The effective date of filing shall be the date the document is e-Filed, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the e-Filing system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

36. The parties agree that e-Filing through the eDockets system shall constitute service in this matter. Anything that cannot be e-Filed shall be served by U.S. mail or delivered to the persons indicated on the official service list by the date the document is required to be served. The service list will be revised as necessary by the Office of Administrative Hearings.

37. The parties shall provide the Administrative Law Judge with a paper courtesy copy of all pre-filed testimony. A courtesy copy of all briefs, motions, memoranda, and proposed findings shall be sent to the Administrative Law Judge and court reporter by electronic mail. Proposed findings and post-hearing briefs should also be sent by electronic mail to the Administrative Law Judge in a Microsoft Word format that permits revision.

38. A Protective Order will be issued in this proceeding, which will govern access to information designated Trade Secret or Nonpublic Data. Material designated Trade Secret or Nonpublic Data shall be prepared and marked in accordance with the

Protective Order, the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, and the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data.

39. The effective date of filing shall be the date the document is e-Filed in the eDocket system, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties must retain the unique eDocket system document identifier as proof of service through that system. Proof of service shall be filed with each document or within three business days thereafter.

XII. Court Reporter

40. The Commission will arrange to have a court reporter present at the hearings. Parties must make arrangements with the court reporter to obtain a copy of the transcripts.

41. The Applicant shall ensure that the Administrative Law Judge is provided with a copy of all transcripts, with the cost to be borne by the Applicant.

XIII. Request for Accommodation

42. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

Dated: September 25, 2017



LAURASUE SCHLATTER
Administrative Law Judge

September 25, 2017

See Attached Service List

Re: 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

**OAH 80-2500-34633
MPUC IP-6946/WS-17-410**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **FIRST PREHEARING ORDER** in the above-entitled matter.

If you have any questions, please contact my legal assistant Katie Lin at (651) 361-7911 or katie.lin@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,



LAURASUE SCHLATTER
Administrative Law Judge

LSS:kjl

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

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	OAH Docket No.: 80-2500-34633
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Katie Lin certifies that on September 25, 2017 she served the true and correct **FIRST PREHEARING ORDER** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Julia	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Brusven	Christina	cbrusven@fredlaw.com	Fredrikson Byron	Electronic Service	No
Dobson	Ian	Residential.Utilities@ag.state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
Gretz	Emerald	emerald.gratz@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Litchfield	Dan	DLitchfield@invenergyllc.com	Invenergy LLC	Electronic Service	No
Overland	Carol A.	overland@legalelectric.org	Legalelectric - Overland Law Office	Electronic Service	No
Schlatter	LauraSue	LauraSue.Schlatter@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Shaddix Elling	Janet	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service	Yes
Wolf	Daniel P	dan.wolf@state.mn.us	Public Utilities Commission	Electronic Service	Yes