

**STATE OF MINNESOTA  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
John Tuma	Commissioner
Katie Sieben	Commissioner

**In the Matter of the Application of Freeborn  
Wind Energy LLC for a Large Wind Energy  
Conversion System Site Permit in Freeborn  
County**

MPUC Docket No. IP-6946/WS-17-410;  
OAH Docket No. 80-2500-34633

**FREEBORN WIND ENERGY LLC'S  
REQUEST FOR CLARIFICATION**

**INTRODUCTION**

Freeborn Wind Energy LLC (“Freeborn Wind”) submits this Request for Clarification (“Request”) to address what appear to be clerical inconsistencies between the Site Permit For A Large Wind Energy Conversion System (“Site Permit”) issued to Freeborn Wind by the Minnesota Public Utilities Commission (“Commission”) and the Order Issuing the Site Permit and Taking Other Action (“Order”), both dated December 19, 2018. As discussed in more detail below, Freeborn Wind proposes revisions that are intended to reduce ambiguity and clarify compliance expectations, particularly related to the post-construction noise study requirements and notice to households potentially “at-risk” for over-the-air (“OTA”) television reception interference.

**BACKGROUND**

On June 15, 2017, Freeborn Wind filed a Site Permit Application for an up to 84 megawatt Large Wind Energy Conversion System project in Freeborn County (the “Project”), with revisions submitted on August 2, 2017. On August 31, 2017, the Commission accepted the

application as substantially complete and referred the matter to the Office of Administrative Hearings (“OAH”) for a contested case proceeding and public hearing.

During the OAH proceeding and in subsequent briefing and argument before the Commission, significant attention was given to (i) the question of how to apply the Minnesota Pollution Control Agency (“MPCA”) Noise Standard, Minn. R. 7030.0040, to this Project; and (ii) the risk and mitigation related to potential OTA interference, among other issues.

On December 19, 2018, the Commission issued its Order, granting the Site Permit for the Project.<sup>1</sup> This Request follows, seeking clarifying revisions to the Site Permit to ensure it is consistent with the Commission’s Order and the record in this proceeding.

### **REQUEST**

#### **I. REQUEST TO CLARIFY SECTION 7.4 RELATED TO THE POST-CONSTRUCTION NOISE STUDY.**

The Commission ordered that Freeborn Wind “provide an updated pre-construction noise analysis demonstrating that the project will comply with the noise permit conditions recommended by the Minnesota Department of Commerce (“Department”) as modified by the conditions proposed by the Company.”<sup>2</sup> In the attached Site Permit, however, the Commission adopted Freeborn Wind’s proposed language for Sections 6.1 and 6.2 but did not adopt the corresponding proposed language for Section 7.4. Instead, it included the language for Section 7.4.1 and 7.4.2 proposed in Staff Briefing Papers.

Freeborn Wind requests the Commission clarify its Site Permit to adopt Section 7.4, as proposed by Freeborn Wind and agreed to by the Department and MPCA, in place of the current

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<sup>1</sup> Order Issuing Site Permit and Taking Other Action (Dec. 19, 2018) (eDocket No. 201812-148595-01).

<sup>2</sup> Order ¶ 2 at 29.

Sections 7.4.1 and 7.4.2, to both ensure consistency with the Order and avoid ambiguity in permit compliance.

Freeborn Wind's September 19, 2018, Late-Filed proposal for Special Conditions Related to Noise outlines the agreement reached between Freeborn Wind, the Department and the MPCA on this issue.<sup>3</sup> The letter indicated that Freeborn Wind had carefully reviewed the proposed Sections 7.4.1 and 7.4.2 from the Staff Briefing Papers, and was concerned they "create[d] ambiguity and would lead to significant compliance challenges."<sup>4</sup> Instead, Freeborn Wind offered "proposed alternative language addressing pre-construction noise modeling and post-construction noise monitoring special conditions" which is "specific to this case" and would "achieve a similar level of noise regulation, but in a manner that can actually be measured following the applicable rules and standards."<sup>5</sup>

Freeborn Wind proposed replacing Sections 7.4.1 and 7.4.2 from Staff Briefing Papers with Sections 6.1. and 6.2, which provided that wind turbine-only sound levels at receptors not exceed 47dB(A) L<sub>50</sub>-one hour, and reinstating the language from Section 7.4 of the Draft Site Permit, which calls for any post-construction noise mitigation to be conducted in consultation with the Department.<sup>6</sup> During oral argument, both the Department and MPCA supported Freeborn Wind's proposed special conditions.<sup>7</sup>

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<sup>3</sup> Late Filed—Proposed Special Conditions Related to Noise (Sept. 19, 2018) (eDocket No. 20189-146486-01).

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 2 (citing, *e.g.*, Minn. R. 7030.0060, subp. 4C).

<sup>6</sup> Order at 13 (discussing the Department's willingness to work with Freeborn Wind to develop noise testing protocols) and 15 (quoting Section 7.4 of the Draft Site Permit).

<sup>7</sup> Order at pp. 13, 15.

Despite the language in Section 6.0 stating that special conditions take precedent over other conditions of the Site Permit should there be a conflict,<sup>8</sup> Freeborn Wind believes it is important to clarify Section 7.4 to avoid ambiguity on this issue during compliance, since the language currently in Section 7.4.1 and 7.4.2 reflects different levels of turbine-only noise and other protocols related to the noise study.

Exhibit A includes a redline of the proposed clarifying revisions to Section 7.4 that reflect the language agreed upon by Freeborn Wind, the Department, and MPCA, as described in the Order.

## **II. REQUEST TO ADD A SPECIAL CONDITION ADOPTING NOTICE FOR AREAS AT-RISK OF OTA INTERFERENCE.**

The Order also discusses at length the position of the parties, the Administrative Law Judge's recommendation, and the Commission action related to potential OTA interference and mitigation measures.<sup>9</sup> As discussed on page 26 of the Order, the Commission added notice requirements for households and local government offices in communities potentially "at-risk" of experiencing OTA interference.<sup>10</sup> Specifically, the Order states that "the Commission prefers to codify this language as its own special condition within the site Permit, superseding the language of any conflicting conditions."<sup>11</sup> The intended special condition language appears to be included in Finding 544 on page 17 of Attachment 1 of the Order – Modifications to the ALJ Report as follows:

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<sup>8</sup> Site Permit at 13.

<sup>9</sup> Order at 22-26.

<sup>10</sup> *Id.* at 26 and ¶ 3 at 30.

<sup>11</sup> *Id.* at 26.

Freeborn Wind must provide notice which includes a description of the Project's potential to interfere with OTA TV service, Freeborn Wind's mitigation program, and availability copies of the Site Permit and Complaint Procedure to households in the following areas:

- All households in "at risk" areas identified for all six local television stations, as identified in Appendix D of the Site Permit Application; ~~and~~
- Each local government office household in the communities of Albert Lea, Northwood, Silver Lake, Gordonsville, Glenville, Hayward, and Moscow; ~~and~~
- Local over-the-air television broadcasters serving the Project area.

This language was not, however, included in Section 6.0 Special Conditions in the Site Permit. Given that the intent of the Order is that Freeborn Wind provide notice of the availability of the Site Permit to these households and government units, Freeborn Wind believes it would be helpful to recipients of the notice if this special condition is also included in the Site Permit.

### **III. ADDITIONAL PROPOSED CLARIFICATIONS.**

Freeborn Wind also proposes the following minor corrections to the Site Permit.

- Section 2.0 indicates that the "remaining 106 MW will be located in Worth County, Iowa." This appears to be a typographical error. The anticipated size of the project in Iowa is 116 MW.

- On page four, the heading "**4.9 Wind Turbine Towers**" appears to have been inadvertently dropped. It should proceed the paragraph that states:

"Structures for wind turbines shall be self-supporting tubular towers. The towers may be up to 80 meters (262.5 feet) above grade measured at hub height."

This change will require re-numbering the remainder of Section 4.

- Section 7.5.1. refers to the Avian and Bat Protection Plan ("ABPP") submitted as Appendix H of the June 15, 2017 Site Permit Application. An updated ABPP, which was

approved by the Department of Natural Resources, was filed as Giampoli Rebuttal Schedule 1 on January 22, 2018.<sup>12</sup>

- Section I of Attachment A directs that complaints may be mailed to Dan Litchfield in an office in Glenville, Minnesota. Freeborn Wind requests that the address be updated to:

Prior to construction:

Dan Litchfield  
Freeborn Wind Energy  
One South Wacker Drive, Suite 1800  
Chicago, IL 60606  
dlitchfield@inenergyllc.com

Upon the commencement of construction, complaints should instead be directed here:

Sean Lawler  
Xcel Energy  
414 Nicollet Mall  
Minneapolis, MN 55401  
sean.w.lawler@xcelenergy.com

### **CONCLUSION**

Freeborn Wind respectfully requests that the Commission adopt the clarifications to Sections 2.0, 4.9, 6.0, 7.4, 7.5.1 and Section I of Attachment A, as described in this Request, to ensure that the Site Permit is consistent with the Order and record in this matter.

Respectfully submitted,

Dated: January 8, 2019

*/s/ Christina K. Brusven*

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<sup>12</sup> Rebuttal – Giampoli Rebuttal Schedule 1 (Jan. 22, 2018) (eDocket No. 20181-139212-02).

**EXHIBIT A**  
**A Redline of Proposed Revisions to the Site Permit For a Large Wind Energy Conversion System In Freeborn County (Dec. 19, 2018).**

**2.0 PROJECT DESCRIPTION**

The Freeborn Wind Farm, when fully constructed and operational will have a nameplate capacity up to 200 MW, of which, 84 MW will be located in Freeborn County, Minnesota and the remaining ~~106~~ 116 MW will be located in Worth County, Iowa. The Project will consist of 42 2- MW wind turbines, consisting solely of one turbine model or a combination of turbine models, which may include Vestas V110 and Vestas V116 as identified in the Permittee’s Site Permit Application.

The project area includes approximately 26,273 acres of land, of which the Project currently holds leases on 17,435 acres. Upon completion, the project site will include no more than 100 acres of land converted to wind turbines and associated facilities approved by this site permit.

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**4.9 Wind Turbine Towers**

Structures for wind turbines shall be self-supporting tubular towers. The towers may be up to 80 meters (262.5 feet) above grade measured at hub height.

\* \* \* \* \*

**6.3 Over-the-Air Television Interference Notice Requirements**

Freeborn Wind must provide notice which includes a description of the Project’s potential to interfere with OTA TV service, Freeborn Wind’s mitigation program, and availability of the Site Permit and Complaint Procedure to households in the following areas:

- All households in “at risk” areas identified for all six local television stations, as identified in Appendix D of the Site Permit Application;
- Each local government office in the communities of Albert Lea, Northwood, Silver Lake, Gordonsville, Glenville, Hayward, and Moscow; and
- Local over-the-air television broadcasters serving the Project area.

\* \* \* \* \*

**7.4 Noise Studies**

**~~7.4.1 Pre-Construction Demonstration of Compliance with Noise Standards~~**

~~Freeborn Wind Energy LLC shall file a plan, including modeling and/or proposed mitigation, at least 60 days prior to the pre-construction meeting that demonstrates it will not cause or significantly contribute to an exceedance of the state noise standards using the following two-part protocol:~~

~~1. If background sound levels are less than the applicable standard at nearby receptors, the modeled turbine-only noise levels cannot cause an exceedance of the applicable state standard at nearby receptors, inclusive of the measured background noise level. "Cause" means that the project turbine only contribution is in excess of the applicable state standard.~~

~~2. If background sound levels are equal to or greater than the applicable state standard at nearby receptors, the windfarm shall not contribute more than 45 dB(A) to total sound levels at the nearby receptors. Therefore, for example, when nighttime background sound levels are at 50 dB(A), a maximum turbine-only contribution of 45dB(A) would result in a non-significant increase in total sound of 1 dB(A).~~

#### ~~7.4.2 Post-Construction Noise Monitoring~~

The Permittee shall file a proposed methodology for the conduct of a post-construction noise study at least 14 days prior to the pre-construction meeting. The Permittee shall develop the post-construction noise study methodology in consultation with the Department of Commerce. The study must incorporate the most current Department of Commerce Noise Study Protocol to determine ~~total sound levels and turbine only contribution~~ the operating LWECS noise levels at different frequencies and at various distances from the turbines at various wind directions and speeds. The Permittee must conduct the post-construction noise study and file with the Commission the completed post-construction noise study within ~~18~~ 2 months of commencing commercial operation.

~~A post-construction noise study must be made, commencing as soon as the Project begins operations, and continuing for the first 12 months of its operation. The study shall be conducted by an independent consultant selected by the Department of Commerce at Freeborn Wind's expense. The independent consultant shall assist the Department of Commerce in developing a study methodology upon consultation with the Minnesota Department of Health and Minnesota Pollution Control Agency. The study must incorporate the Department of Commerce Noise Study Protocol to determine the operating LWECS noise levels at different frequencies and at various distances from the turbines at various wind directs and speeds. In addition, the study must demonstrate the extent to which turbine only noise contributes to the overall decibel level. Special attention should be paid to receptors predicted to experience the highest turbine noise levels. The completed post-construction noise study shall be filed with the Commission within 14 months after the Project becomes operational.~~

~~If the monitored turbine only noise level is determined to be greater than the Minnesota State Noise Standard at nearby receptors or if the background sound levels exceed the Minnesota State Noise Standards and the turbine only contribution exceeds 45 dB(A), the Permittee shall work with the Department of Commerce to develop a plan to minimize and mitigate turbine only noise impacts~~

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#### 7.5.1 Avian and Bat Protection Plan

The Permittee shall comply with the provisions of the Avian and Bat Protection Plan (ABPP), as submitted in for this project as Giampoli Rebuttal Schedule 1, filed on January 22, 2018, Appendix H of the June 15, 2017 site permit application and revisions resulting from the annual audit of ABPP implementation. The first annual audit and revision will be filed with the Commission 14 days



before the preconstruction meeting and revisions should include any updates associated with final construction plans. The ABPP must address steps to be taken to identify and mitigate impacts to avian and bat species during the construction phase and the operation phase of the project. The ABPP shall also include formal and incidental post-construction fatality monitoring, training, wildlife handling, documentation (e.g., photographs), and reporting protocols for each phase of the project.

The Permittee shall, by the 15th of March following each complete or partial calendar year of operation, file with the Commission an annual report detailing findings of its annual audit of ABPP practices. The annual report shall include summarized and raw data of bird and bat fatalities and injuries and shall include bird and bat fatality estimates for the project using agreed upon estimators from the prior calendar year. The annual report shall also identify any deficiencies or recommended changes in the operation of the project or in the ABPP to reduce avian and bat fatalities and shall provide a schedule for implementing the corrective or modified actions. The Permittee shall provide a copy of the report to the Minnesota Department of Natural Resources and to the U.S. Fish and Wildlife Service at the time of filing with the Commission.

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## **I. Permittee Contacts for Complaints and Complaint Reporting**

Complaints may be filed by mail or email to:

Prior to construction:

Dan Litchfield, ~~Project Developer~~  
120 East Main Street  
Glenville, MN 55036  
(312) 582-1057  
freebornwind@invenergyllc.com  
Freeborn Wind Energy  
One South Wacker Drive, Suite 1800  
Chicago, IL 60606  
dlitchfield@invenergyllc.com

Upon the commencement of construction, complaints should instead be directed here:

Sean Lawler  
Xcel Energy  
414 Nicollet Mall  
Minneapolis, MN 55401  
sean.w.lawler@xcelenergy.com