

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**No. A19-1195**

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

**Association of Freeborn County  
Landowners,**

**Relator,**

**vs.**

**Minnesota Public Utilities Commission,**

**and**

**Freeborn Wind Energy, LLC,**

**Respondents**

**RELATOR  
ASSOCIATION OF FREEBORN  
COUNTY LANDOWNERS'  
MOTION FOR STAY  
OF  
PROCEEDING**

Association of Freeborn County Landowners (hereinafter “AFCL”) requests the court stay the appeal proceedings. As announced and expected, Northern States Power d/b/a Xcel Energy, as owner of Freeborn Wind LLC, has filed for multiple amendments to the Freeborn Wind site permit. Minn. R. 7854.1311, Subp. 2 and 4. It would be a waste of resources to continue with this appeal as material terms of the permit are proposed to change with this coming amendment.

Tuesday, August 20, 2015, Northern States Power d/b/a Xcel Energy, as owner of Freeborn Wind LLC (hereinafter “Freeborn Wind”) filed a permit amendment request with the Minnesota Public Utilities Commission (hereinafter “Commission”). The site

permit amendment request is over 400 pages and includes multiple appendices detailing the changes to the project. See AFCL Exhibits 1, 2, 3, and 4 (Freeborn Wind<sup>1</sup> Site Permit Amendment Request, Narrative and Attachments A-J), and Declaration of Overland.

Freeborn Wind is “requesting an updated turbine layout that incorporates Vestas V110 and V120 turbine generator models... Specifically, the Application included 10 Vestas V110 turbines and 32 Vestas V116 turbines; the 2019 Project layout includes 10 Vestas V110 turbines and 31 Vestas V120 turbines...” Ex. 2, Narrative p. 2. Noise remains a material term and primary issue, following the Administrative Law Judge’s Recommendation that the project application be denied because:

The Applicant failed to demonstrate, by a preponderance of the evidence, that the Project complies with Minn. R. 7030.0040. Therefore, the Project does not comply with criteria set forth in chapter 216F and section 216E.03, subdivision 7 of the Minnesota Statutes and chapter 7854 of the Minnesota Rules.

Ex. 5, para. 5, Conclusions of Law, ALJ’s Recommendation, p. 118. Further:

Based upon these Conclusions of Law, the Administrative Law Judge respectfully recommends that the Commission deny the site permit to Freeborn Wind Energy, LLC to construct and operate the up to 84 MW portion of the Freeborn Wind Farm in Freeborn County, Minnesota. In the alternative, the Administrative Law Judge respectfully recommends that the Commission provide Freeborn Energy, LLC 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.

Ex. 5, ALJ Recommendation, p. 119.

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<sup>1</sup> The Site Permit Amendment Application, Parts 1-4, were filed as “Xcel Energy” and not “Freeborn Wind Energy, LLC.” This is noteworthy, again, because on p. 8 of its Motion, in a footnote, Freeborn Wind raises an issue with party service. Fn. 2, p. 8, which was characterized as “Project Owner Permittee” and “Former Owner Permittee” when served by Certified Mail. Freeborn Wind characterized parties similarly in its Notice of Appearance where attorneys “hereby notice their appearances as counsel for Respondent Northern States Power Company dba Xcel Energy as the owner of Freeborn Wind Energy LLC.” The E-MACS filing service also states “Representing” “Xcel Energy, Inc. Respondent” as the party represented.

Xcel Energy's site permit amendment application narrative details changes in noise, visual impacts, cultural and archaeological resources, recreation, public health and safety, land-based economics, wetlands, vegetation, decommissioning and restoration (filed for the first time post issuance of site permit on February 11, 2019). Many specific permit amendments are proposed for the following permit sections:

- Section 2.0 Project Description
- Section 3.0 Designated Site
- Section 3.1 Turbine Layout
- Section 4.1 Wind Access Buffer
- Section 4.2 Residences
- Section 4.3 Noise
- Section 4.9 Wind Turbine Towers
- Section 5.2.26 Tower Identification
- Section 5.4 Electrical Collector and Feeder Lines
- Section 7.2 Shadow Flicker
- Section 7.5.1 Avian and Bat Protection Plan
- Section 10.3 Site Plan

Ex. 1, Amendment Application Narrative, see also Ex. 2-4, Attachments A-J.

Xcel's filing also produces the first noise study for the new turbines and this study addresses turbine model selection, design, and the new siting plan's impact on noise generated by the project. This is also the first "Pre-Construction Noise Study" filed since the ALJ's Recommendation of denial and suggestion that applicant be provided with opportunity to produce a noise study demonstrating potential for compliance. This new noise study, filed August 20, 2019, is also the first produced since the original siting

Application, Appendix B's Noise Study, filed June 5, 2017, and the Ambient Noise Level modeling filed on March 1, 2018, which was filed one week after the closing of the hearing in the contested case.<sup>2</sup> Ex. 5, ALJ Recommendation, p. 1.

Freeborn Wind's production of a Pre-Construction Noise Study at this time is important based on the ALJ's Recommendation suggesting Freeborn file a noise study demonstrating compliance, and Freeborn Wind's failure to do so for 15 months:

In the alternative, the Administrative Law Judge respectfully recommends that the Commission provide Freeborn Energy, LLC 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.

Ex. 5, ALJ Recommendation, p. 119 (May 14, 2018). The Commission's May 10, 2019 Order eliminating parts of Permit Section 7 related to noise is one subject of this appeal.

The Decommissioning Plan is also significant, as it was filed on February 11, 2019, only after the Commission approve the permit, and despite a rule requiring inclusion in an application, it was not, and has not been previously available for public and agency comment and review.

Minn. R. 7854.0500, Subp. 13. The failure of the Commission to require filing of a decommissioning plan was addressed in the Commission's Order of May 14, 2019, and is another subject of this appeal.

These filings and amendment of the site permit will require thorough process and consideration.

If the Commission follows typical procedure for Site Permit Amendments, and follows through on its adoption of Findings regarding process in the Freeborn Docket, there will be a comment period and a hearing and report, followed by a Commission meeting and decision and a

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<sup>2</sup> PUC Document [20183-140710-03](#), filed as "Other-Exhibit R-18 Affidavit of Mike Hankard and Noise Tables," 3/1/2018.

written order thereafter. Minn. R. 7854.1300; Minn. R. 7829. See also:

**Finding 243**

Should the Commission choose to do so, it could provide Freeborn Wind with an opportunity 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. ~~The plan should include low frequency noise measurements for evaluation in consultation with MDH.~~

**Finding 244**

The Administrative Law Judge further recommends that the plan be made available for public and agency comment and a hearing held with a summary report. The Commission should then review and approve a pre-construction noise mitigation plan that best assures that turbine noise will not cause noise levels that exceed Minnesota’s noise standards.

MPUC Freeborn Wind Site Permit Order, adopting FoF #243 and 244 (PUC Document ID [201812-148595-01](#)). This Site Permit Amendment will take some time.

Association of Freeborn County Landowners requests a stay of this appeal proceeding during the pendency of the Freeborn Wind Energy LLC site permit amendment, and proposes scheduled filings of process updates. Although it is likely the Commission will amend the site permit in some way, the timing and result is speculative. AFCL has no desire to waste the time and resources of the court.



August 22, 2019

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