

STATE OF MINNESOTA
IN COURT OF APPEALS



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

O R D E R
A19-1195

Considered and decided by Smith, Tracy M., Presiding Judge; Reyes, Judge; and Florey, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:

This certiorari appeal was filed on July 30, 2019. Relator Association of Freeborn County Landowners seeks review of a May 10, 2019 amended order issued by respondent Minnesota Public Utilities Commission (the commission) and the commission's July 2, 2019 order denying relator's petition for reconsideration. Respondent Freeborn Wind Energy LLC (Freeborn Wind) moves to dismiss the appeal as untimely. The commission joins in Freeborn Wind's motion. Relator filed a response opposing the motion. Freeborn Wind filed a reply to the response.

I.

Within 20 days after the service by the commission of any decision constituting an order or determination, any party to the proceeding and any other aggrieved person may apply to the commission for a rehearing with respect to any matters determined in the

decision. Minn. Stat. § 216B.27, subd. 1 (2018). Only one rehearing shall be granted by the commission. *Id.*, subd. 3. A second petition for rehearing, amendment, vacation, reconsideration, or reargument of a commission decision or order by the same party and upon the same grounds as the former petition that has been considered and denied will not be entertained. Minn. R. 7829.3000, subp. 7 (2017).

On December 19, 2018, the commission issued its original order granting a site permit to Freeborn Wind. Multiple parties, including relator and Freeborn Wind, filed petitions for reconsideration. On May 10, 2019, the commission issued its amended order. On May 30, 2019, relator submitted a petition for reconsideration. Freeborn Wind argued that relator's May 30, 2019 petition was unauthorized and should be stricken. The commission reviewed the petition on the merits and denied it in a July 2, 2019 order.

The commission's May 10, 2019 order states that the commission declines to act on the parties' motions for reconsideration but instead, on its own motion, the commission reconsiders its site-permit order and makes corrections in the permit language as recommended by the Minnesota Department of Commerce and Freeborn Wind. We agree with relator that Minn. Stat. § 216B.27, subd. 3, and Minn. R. 7829.3000, subp. 7, did not prohibit relator from petitioning for reconsideration of the commission's amendments to the December 19, 2018 order.

Relator acknowledges that this appeal is limited to those specific matters addressed in the May 10, 2019 amended order. The panel to be assigned to consider this appeal on

the merits will be in the best position to determine whether relator's brief raises issues outside our scope of review.

II.

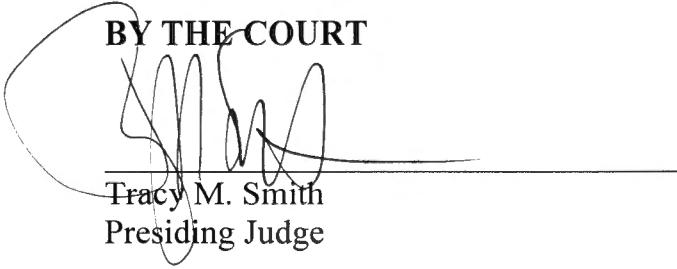
Any party to a proceeding before the commission or any aggrieved person may appeal from the decision and order of the commission in accordance with chapter 14. Minn. Stat. § 216B.52, subd. 1 (2018). "A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the court of appeals and served on all parties to the contested case not more than 30 days after the party receives the final decision an order of the agency." Minn. Stat. § 14.63 (2018).

Freeborn Wind's motion to dismiss contains a footnote suggesting that relator's service of the petition for the writ on counsel for Xcel Energy, Inc., the current owner of Freeborn Wind, was improper. "Service on a party represented by counsel shall be made on the attorney." Minn. R. Civ. App. P. 125.02. Relator's service of the petition for the writ was timely and proper.

IT IS HEREBY ORDERED: Respondent Freeborn Wind Energy LLC's motion to dismiss the appeal is denied.

Dated: August 27, 2019

BY THE COURT



Tracy M. Smith
Presiding Judge