

**BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Katie Sieben
Dan Lipschultz
Valerie Means
Matt Schuerger
John A. Tuma**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

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

PUC Docket No. IP6946/WS-17-410

**ASSOCIATION OF FREEBORN COUNTY LANDOWNERS
COMMENT ON AMENDMENT OF FREEBORN WIND SITE PERMIT
AND
REQUEST FOR CONTESTED CASE**

Northern States Power Minnesota (NSPM) d/b/a Xcel Energy as owner of Freeborn Wind, LLC (hereinafter “Freeborn Wind”) has requested that the Freeborn Wind, LLC site permit be amended. Applicants have both the burden of production and the burden of proof. The Commission accepted the request for amendment of the permit and on October 23, 2019, the Commission issued “Notice of Comment Period,” requesting comments on the following questions:

- Should the Minnesota Public Utilities Commission amend the Freeborn Wind Farm Site Permit to change the number, type and layout of the turbines to be used, as well as additional participating land?
- Should the Commission accept the supplemental environmental impact analysis?
- Should any permit conditions be modified or added if the requested amendments are approved?

- Are there other issues or concerns related to this matter?

Association of Freeborn County Landowners (hereinafter “AFCL”), an intervenor with full party status, offers these initial comments. Because Xcel Energy filed over 20 line item filings, hundreds of pages, in this docket on Friday, November 8, 2019, AFCL has requested an extension of time for comment. Xcel objected, stating “AFCL’s request is premised solely on the Company making pre-construction filings today for project substation and O&M building site preparation (grading in a row crop agricultural field on land owned by Xcel Energy) and pouring of an associated concrete pad.” Xcel’s Friday 26 line item filings go far beyond what Xcel in its Objection states are substation and O&M plans. AFCL again requests a two week extension for filing comments to address these filings, with a 2 week extension for reply comments.

Addressing the Commission’s question of whether the Minnesota Public Utilities Commission amend the Freeborn Wind Farm Site Permit to change the number, type and layout of the turbines to be used, as well as additional participating land, that cannot be determined without a contested. The need for a contested case and public hearings is clear, from the Commission’s adoption of the ALJ’s Findings 243 and 244, and the allowance of time to demonstrate that it could comply with requirements, and in response to the many filings of Xcel Energy with its permit amendment request, and the need for public, party, and agency review. To date, the record does not support, and Freeborn Wind has not demonstrated, that it can comply with permit requirements.

In the original contested case for this project, the Administrative Law Judge found that Freeborn Wind had not demonstrated that it could comply with the MPCA’s noise standard.

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.

ALJ's Recommendation of Denial, p. 118-119, #5 Conclusions of Law¹; see also Minn. R. 7030.0400.

The Findings of Fact amended and adopted by the Commission include FoF 243 and 244:

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.

Order, December 19, 2018. Those Findings as amended above have not been amended or deleted in subsequent orders.

Regarding the Commission's second question, as to whether the Commission accept the supplemental environmental impact analysis, again, the Commission should "accept" it for filing, but a contested case is required to review the information presented by parties, the public, and agencies.

The Xcel Energy Request for Amendment is extensive², over 500 pages, and it requires thorough analysis by parties, the public, and agencies. AFCL hereby requests referral to the Office of Administrative Hearings for a contested case and public hearings to address the many

¹ Initial Filing 5/14/2018 (PUC Unique ID ([20185-143018-01](#)), refiled separating Recommendation from a denial of an AFCL Motion (PUC Unique ID [20185-143479-02](#)).

issues of material fact, including, but not limited to, those presented below.

Based upon this Application for Permit Amendment, the material issues of fact and AFCL’s comment and supported by the Affidavit of Overland and documents attached thereto, comments from the public, AFCL requests a Contested Case addressing the material issues of fact, including, but not limited to:

- Whether the project can and will comply with the noise standard. Minn. R. 7030.0400.
- Whether 3 dB(A), a doubling of sound pressure, is a “non-significant increase.”
- Whether the 3 dB(A) modeling margin of error should be accounted for in determination of likely compliance.
- Whether use of a 0.5 ground factor is supported by the science of wind noise modeling.
- Whether use of 0.0 ground factor is the standard ground factor for wind noise modeling due to height of turbine and direct line to receptors on ground.
- Whether use of a 0.5 ground factor lowers modeled noise by 3 dB(A) from modeling results using 0.0 ground factor.
- Whether failure to include 3 dB(A) margin of error and 3 B(A) impact of use of 0.5 ground factors skews modeling results by predicting lower noise levels.
- Whether addition of 3 dB(A) margin of error and/or 3 dB(A) 0.5 ground factor decrease to the values of Table 5.1 demonstrates likelihood of noise levels above standard.
- Whether ISO 3613-2 and Minn. R. 7030.0400 were designed for wind noise modeling.
- Whether ISO 3613-2 and Minn. R. 7030.0400 were designed for modeling noise where noise source is high above ground level.
- Whether ISO 3613-2 and Minn. R. 7030.0400 were designed for modeling ground noise generation and ground receptors.
- Whether ambient sound measurements are to be included in modeling under 2015 Commerce and MPCA Comments and/or 2012 MPCA Guidelines.
- Whether cumulative impacts of outstate portion of this project and/or other nearby projects are to be included in modeling.
- Whether the increase in size of blades increases noise emitted, and if so, how much.
- Whether use of feathered blades decreases noise emitted, and if so, how much.

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20198-155331-01	PUBLIC	17-410	WS	XCEL ENERGY	OTHER--SITE PERMIT AMENDMENT APPLICATION-PART 1 OF 4 – Narrative → Attachment C	08/20/2019
20198-155331-02	PUBLIC	17-410	WS	XCEL ENERGY	OTHER--SITE PERMIT AMENDMENT APPLICATION-PART 2 OF 4 – Attachment D (p. 1-10)	08/20/2019
20198-155331-03	PUBLIC	17-410	WS	XCEL ENERGY	OTHER--SITE PERMIT AMENDMENT APPLICATION-PART 3 OF 4 – Attachment D (p. 11-20)	08/20/2019
20198-155331-04	PUBLIC	17-410	WS	XCEL ENERGY	OTHER--SITE PERMIT AMENDMENT APPLICATION-PART 4 OF 4 – Attachment E → J	08/20/2019

- Whether ISO 3613-2 and Minn. R. 7030.0400 address the expected sound power levels at lower bandwidths (i.e., 125, 63, 31.5, and lower).
- Whether participants and non-participants are afforded different treatment under the noise rule.
- Whether permit language and amended permit language and removal of Section 7.4.1 is consistent with requirements of Minn. R. 7030.0400.
- Whether setbacks proposed are sufficient to meet the noise standard.
- Whether small wind standards for noise and noise setbacks, are appropriate to use for LWECS.
- Whether the Commission’s/EERA’s draft site permit and site permit template sections regarding noise has a basis in law or rule.
- Whether shadow flicker modeling accurately depicts potential for impacts.
- Whether 30 hours annually is reasonable limit for shadow flicker.
- Whether project as proposed will limit shadow flicker to 30 hours annually, the ceiling for shadow flicker under both the permit and the Freeborn County ordinance.
- Whether project proposes different shadow flicker limits for participants and non-participants, and if so, whether that is a legitimate distinction.
- Whether reliance on complaints of the affected public to trigger investigation and mitigation of shadow flicker is reasonable.
- Whether applicant has provided all the required decommissioning information for Minn. R. 7854.0500, Subp. 13.
- Whether shifting timing of production of Decommissioning information out beyond granting of permit removes it from public participation and scrutiny, a limitation of due process.
- Whether lease clause allowing shift of decommissioning and cost to landowners, “allowing” landowners to then collect from owner is permissible.
- Whether financial assurance is adequate.
- Whether decommissioning costs are accurate given Xcel and other cost estimates.
- Whether Invenergy’s Dan Litchfield should be the pre-construction contact person.
- Whether the Complaint Procedures filed by Xcel Energy are adequate.

A contested case is necessary to address these issues of material fact.

I. WHETHER THE PROJECT IS LIKELY TO COMPLY WITH THE MPCA’S NOISE STANDARD IS AN ISSUE OF MATERIAL FACT.

In the original contested case for this project, as above, the Administrative Law Judge found that Freeborn Wind had not demonstrated that it could comply with the MPCA’s noise standard. ALJ’s Recommendation of Denial, p. 118-119, #5 Conclusions of Law³; see also

³ Initial Filing 5/14/2018 (PUC Unique ID ([20185-143018-01](#)), refiled separating Recommendation from a denial of an AFCL Motion (PUC Unique ID [20185-143479-02](#)).

Minn. R. 7030.0400. To date, there has been no demonstration that the project can or will comply with the state's noise rule, and there is much in the record to suggest that it will not.

The following are material noise-related issues that are not settled and must be addressed in a contested case, including but not limited to:

- Whether the project can and will comply with the noise standard. Minn. R. 7030.0400.
- Whether 3 dB(A), a doubling of sound pressure, is a “non-significant increase.”
- Whether the 3 dB(A) modeling margin of error should be accounted for in determination of likely compliance.
- Whether use of a 0.5 ground factor is supported by the science of wind noise modeling.
- Whether use of 0.0 ground factor is the standard ground factor for wind noise modeling due to height of turbine and direct line to receptors on ground.
- Whether use of a 0.5 ground factor lowers modeled noise by 3 dB(A) from modeling results using 0.0 ground factor.
- Whether failure to include 3 dB(A) margin of error and 3 B(A) impact of use of 0.5 ground factors skews modeling results by predicting lower noise levels.
- Whether addition of 3 dB(A) margin of error and/or 3 dB(A) 0.5 ground factor decrease to the values of Table 5.1 demonstrates likelihood of noise levels above standard.
- Whether ISO 3613-2 and Minn. R. 7030.0400 were designed for wind noise modeling.
- Whether ISO 3613-2 and Minn. R. 7030.0400 were designed for modeling noise where noise source is high above ground level.
- Whether ISO 3613-2 and Minn. R. 7030.0400 were designed for modeling ground noise generation and ground receptors.
- Whether ambient sound measurements are to be included in modeling under 2015 Commerce and MPCA Comments and/or 2012 MPCA Guidelines.
- Whether cumulative impacts of outstate portion of this project and/or other nearby projects are to be included in modeling.
- Whether the increase in size of blades increases noise emitted, and if so, how much.
- Whether use of feathered blades decreases noise emitted, and if so, how much.
- Whether ISO 3613-2 and Minn. R. 7030.0400 address the expected sound power levels at lower bandwidths (i.e., 125, 63, 31.5, and lower.
- Whether participants and non-participants are afforded different treatment under the noise rule.
- Whether permit language and amended permit language and removal of Section 7.4.1 is consistent with requirements of Minn. R. 7030.0400.
- Whether setbacks proposed are sufficient to meet the noise standard.
- Whether small wind standards for noise and noise setbacks, are appropriate to use for LWECS.
- Whether the Commission's/EERA's draft site permit and site permit template sections regarding noise has a basis in law or rule.

Since the ALJ's Recommendation of Denial, no follow up noise studies were submitted for the record until NSP d/b/a Xcel Energy as owner of Freeborn Wind filed its amendment request on August 20, 2019, which contained, among other things, Attachment E, "2019 Updated Pre-Construction Noise Analysis."

Noise monitoring is a material issue, particularly in light of Freeborn Wind's initial failure to demonstrate it could comply with the MPCA noise standard, and Freeborn Wind's failure to provide such demonstration prior to issuance of the site permit. The Bent Tree noise studies showing exceedences shows how important this is when those studies showed noise exceedences of smaller wind turbines at 1,150 and 1,525 feet.

A fundamental issue of material fact is the applicants use of 0.5 ground factor in noise modeling after use of the 0.0 ground factor failed to demonstrate compliance. Use of a 0.5 ground factor following failure of a demonstration of compliance is "moving the goalposts" and needs to be carefully scrutinized and whether use of that ground factor is appropriate for wind noise modeling must be addressed. Hankard's testimony in the Badger Hollow docket was that wind was an exception to use of a 0.5 ground factor due to the elevation of the noise source:

The model that we use has been shown to predict conservatively with 0.5. I mean, 0.5 ground factor is used in probably -- well, with the exception perhaps of wind turbine projects which are different because the source is elevated. But for projects like a typical power plant, a solar plant where the sources are relatively close to the ground, I would say 90 to 99 percent of the studies use 0.5.

Exhibit A, Hankard, Tr. p. 122, WI PSC Badger Hollow Docket 9697-CE-100.

Wind developers have been found to utilize a 0.5 ground factor when 0.0 produces results predicting noise exceedences, in this docket, and in at least one docket in Wisconsin. 0.0 is the appropriate ground factor for a turbine hundreds of feet in the air with direct access to the receptors, and 0.5 is intended for modeling ground source noise, not wind noise, a greatly

elevated source.⁴ AFCL Exhibit B, Testimony of Schomer, Wisconsin PSC Docket 2535-CE-100; see Exhibit A, Testimony of Hankard (selected), Wisconsin PSC Docket 9697-CE-100⁵. Wind, because it is elevated with a direct path to “receptors,” and not impaired by terrain, vegetation, and/or buildings. The International Standard ISO 9316-2, the noise modeling standard was not developed for wind turbine noise emanating 300+ feet in the air. See Schomer, *id.* ISO 9316-2 and the 1996 revision, ISO 9316-2 (1996) were developed for noise modeling of a facility that is located on the ground and to measure noise impact on “receptors,” also on the ground, and the impact of ground absorption. *Id.* It was not designed for modeling of noise impacts of sources 300+ feet in the air. *Id.* Use of the 0.5 ground factor rather than the 0.0 ground factor as a modeling assumption underpredicts noise by 3dB(A), a doubling of noise, and when added to the modeling 3 dB(A) margin of error, there is a resulting increase by a factor of 2-4 – the amount of the increase in noise depends on the frequency. See Exhibit B, Schomer, 577-578); see *Id.*, Hessler 519-520, 524-525 re: 10 dB(A) margin to allow for compliance.

Wind developers have also failed to include ambient noise studies in conjunction with their project noise modeling, failing to comply with the Minnesota Department of Commerce Wind Noise Guidance and MPCA’s interpretation of noise rules.⁶ For this reason, the Freeborn Invenergy applicant, utilizing Hankard, was ordered to provide that modeling within one week after the close of the hearing to correct that omission, and filed that exhibit on March 1, 2018 (FR-18, Affidavit of Hankard and Noise Tables, [20183-140712-03](#)). This requirement, found in the 2015 Commerce Guideline is reinforced by MPCA’s comment, as above, and further when MPCA’s Frank Kohlasch filed a letter in the Freeborn Wind docket. See Freeborn Wind Hearing

⁴ Exhibit B, Testimony of Schomer, Affidavit of Overland (Wisconsin PSC Docket 2535-CE-100).

⁵ Exhibit A, Testimony of Hankard, Affidavit of Overland (WSPC Docket 9697-CE-100).

⁶ Online at <https://mn.gov/eera/web/project-file?legacyPath=/opt/documents/FINAL%20LWECS%20Guidance%20Noise%20Study%20Protocol%20JULY%209%202013.pdf> See MPCA’s Comment, Appendix A (p. 12 of 13).

Exhibit EERA-9, Guidance for Large Wind Energy Conversion System Noise Study Protocol and Report (20183-140949-02); see also MPCA Comments ([20189-146351-01](#)). The MPCA Kolasch letter stated expressly that ambient noise was to be included – that “the MPCA has historically, and consistently, interpreted and applied said noise standards for *total* sound⁷.

There is a 3 dB(A) margin of error incorporated into modeling. In the original contested case, when asked about the margin of error, whether it is ± 2 dB(A), Hankard stated:

NO, it's 3.

Tr., Vol 1 B p. 64 l. 2-24 – p. 65 l 1-8; see also Tr., p. 112 l. 15 – p. 113 l. 12; referenced in Permit Order Finding 241 fn 1.

The modeling for the new turbines and disclosure of locations has now been produced by NSP/Xcel, and there must be an opportunity for vetting of this information, in particular because the previous modeling in the record, all modeled using a 0.0 ground factor, was not sufficient to demonstrate compliance. The reliability and credibility of the new noise modeling is a material issue to be established in a contested case hearing.

Xcel Energy/NSPM/Freeborn Wind LLC has yet to demonstrate that it can and will comply, and while it may be possible for Xcel to comply, as of this date, compliance is not supported by fact or the record. Compliance has not yet been demonstrated. The project has changed, and potential for compliance must be demonstrated in a contested case.

II. WHETHER SETBACK DISTANCES PROPOSED ARE ADEQUATE IS A MATERIAL ISSUE OF FACT

Whether the setbacks proposed by the applicants are adequate is a material issue of fact. The movement of turbines proposed in Xcel's plan, and the noise and shadow flicker impacts based on the increased turbine size and placement, must be reviewed in a contested case.

⁷ MPCA's Frank Kolasch letter, September 11, 2018, Freeborn Wind docket IP-6946/WS-17-410. https://legalelectric.org/f/2019/02/Exhibit-M_Kohlasch_Letter_20189-146351-01.pdf

Whether the setbacks for noise, shadow flicker, or other purposes that are proposed by the applicants are sufficient is an issue of material fact. Whether setbacks for these larger turbines that are less than 1,150 and 1,525, the setbacks in the Bent Tree Noise Studies that showed exceedences, are adequate for this project is a material issue of fact. As above, noise monitoring is a material issue, particularly in light of Freeborn Wind’s initial failure to demonstrate it could comply with the MPCA noise standard, and Freeborn Wind’s failure to provide such demonstration prior to issuance of the site permit.

For example, Applicants state that turbine #47 was removed due to noise. Turbines 16, 23, and 37 (participants) and 20, 30 and 40 (non-participants) appear to be the same distance and direction of #47, which was removed. See Amendment Application, part 4 of 4. Why are these other similarly situated turbines not removed? Using google earth and the coordinates of turbines and homes found in Attachment G, turbine #29 appears to be 1370’ from a home. Turbine # 47 appears to be 1,342 feet from a home. It is difficult to tell, but there is a question regarding the distance from turbines to homes, and the information provided is not specific. Mindful that a turbine at 1,342 feet was, by applicant’s admission, removed for “noise,” and that in Bent Tree, one of the homes bought out was 1,525 from the nearest turbine, and with demonstrated exceedences at 1,525 feet, it is an issue of material fact whether the project can comply with the noise standard at less than 1,525 feet.

Table 3-1 Final Measurement Point Locations

Final Measurement Point	Easting	Northing	Distance to nearest turbine, ft
Langrud (BT-M01)	462985	4841921	1150 – Turbine 362
Hagen (BT-M02)	462949	4847019	1525 – Turbine 132

Table 3-1, p. 11, AFCL-11 ([201712-138411-07](#)), Bent Tree Noise Monitoring and Noise Study Phase I, Appendix A; see also Bent Tree Noise Report, Phase II, p. 10 of Comment of Stephanie Richter, 3/15/2019 ([20183-141042-01](#)).

The Bent Tree noise studies showing exceedences of the noise standard at 1,150 and 1,525 feet shows how important this is when those studies demonstrated noise exceedences of turbines smaller than those proposed for this project at 1,150 and 1,525 feet.⁸ Larger, noisier turbines, such as the V120s proposed to replace V116s in this project, would likely require greater setback distances for compliance.

III. SHADOW FLICKER MODELING SHOWS POTENTIAL FOR IMPACTS

There are multiple material issues of fact regarding shadow flicker, including but not limited to:

- Whether shadow flicker modeling accurately depicts potential for impacts.
- Whether 30 hours annually is reasonable limit for shadow flicker.
- Whether project as proposed will limit shadow flicker to 30 hours annually, the ceiling for shadow flicker under both the permit and the Freeborn County ordinance.
- Whether project proposes different shadow flicker limits for participants and non-participants, and if so, whether that is a legitimate distinction.
- Whether reliance on complaints of the affected public to trigger investigation and mitigation of shadow flicker is reasonable.

Shadow flicker is at issue, and the above points are material issues of fact that must be settled. The applicant has provided over 300 pages of shadow flicker data and predictions. After a review of these pages, Dorenne Hansen of AFCL stated in her comment:

The highest shadow flicker occurs for a participant at 6,412 minutes or more than 106 hours. The highest shadow flicker for a non-participant is 7,416 minutes or more than 123.6 hours.

There are 19 participants and 18 non-participants showing over 30 hours of shadow flicker to their receptor.

Hansen Comment, November 11, 2019 (201911-157410).

IV. DECOMMISSIONING PLAN MUST BE REVIEWED AND VETTED.

There are several aspects of decommissioning that constitute material issues of fact,

⁸ See Bent Tree Noise Monitoring Study, p. /, PUC Unique ID #/.

factors not addressed in the contested case proceeding, including but not limited to:

- Whether applicant has provided all the required decommissioning information for Minn. R. 7854.0500, Subp. 13.
- Whether shifting timing of production of Decommissioning information out beyond granting of permit removes it from public participation and scrutiny, a limitation of due process.
- Whether lease clause allowing shift of decommissioning and cost to landowners, “allowing” landowners to then collect from owner is permissible.
- Whether financial assurance is adequate.
- Whether decommissioning costs are accurate given Xcel and other cost estimates.

First is whether the decommissioning plan filed in February, 2019, after granting of the site permit and with no review or vetting in the contested case, is adequate. Under the rules, a plan and decommissioning information including cost and financial assurance plan must be provided in the Application, and it was not. The Commission, Commerce, and the Administrative Law Judge all failed to require that the application comply with the rules. A decommissioning plan was provided after the permit was issued by the Commission, but it has had no review by the public, parties, or agencies.

The decommission plan and financial assurance must be reviewed and vetted in a contested case hearing to establish whether the plan is adequate and whether the applicant has provided all the information required by rule; whether cost estimates are accurate and consistent with other cost estimates; whether the applicant sufficiently takes responsibility for decommissioning; and whether the process for review of the decommissioning plan provides sufficient due process to parties and the public.

The rule regarding application content is specific, and without question, this information was not included in the original application, nor was it included in response to discovery or in testimony in the contested case:

7030.0500, Subp. 13. Decommissioning and restoration.

The applicant shall include the following information regarding decommissioning of the project and restoring the site:

- A. the anticipated life of the project;
- B. the estimated decommissioning costs in current dollars;
- C. the method and schedule for updating the costs of decommissioning and restoration;
- D. the method of ensuring that funds will be available for decommissioning and restoration; and
- E. the anticipated manner in which the project will be decommissioned and the site restored.

Minn. R. 7854.0500, Subp. 13.

No permit should have been granted before this information has been provided, opened for comment, and reviewed by Commerce, the public, parties, and the Commission, as contemplated by the requirement that decommissioning information be included in the application. This is the Commission's responsibility to assure an application, and as agent for the Commission, it is also the Department's responsibility.

Decommissioning is particularly important, because in the project leases, there is a clause which would transfer responsibility for decommissioning to the landowner, who would then need to attempt to collect costs from the project owner:

If Grantee fails to remove such Windpower Facilities within twelve (12) months of termination of the Easement, or such longer period as Owner may provide by extension, Owner may do so, in which case grantee shall reimburse Owner for reasonable and documented costs of removal and restoration incurred by Owner.

Exhibit C, AFCL-35, Wayne Brandt Public Comment from Public Hearing, p. "15" [20183-140948-08](#)

see also Brandt, Public Hearing, p. 133-139. Xcel's response to AFCL's Information Request 9 was that it would not remove this clause allowing a shift of decommissioning responsibility to the landowner, stating it was a standard clause in a wind lease. Exhibit D, AFCL IR 9. Xcel also stated in an Information Request response that it would not add a statement that "*As owner and operator of Project facilities, Xcel Energy will bear the financial responsibility for*

decommissioning activities and Project area restoration.” as it deemed that was “unnecessary.”

Exhibit E, AFCL IR 10.

The Lake Benton II project demonstrates financial assurance through a performance bond:

4.0 DECOMMISSIONING SECURITY

LBII will establish performance bonds with Pipestone County for the total amount of infrastructure located within those communities.

Exhibit H, Lake Benton II (IP-6903/WS-18-179). Freeborn Wind has not established performance bonds with Freeborn County for decommissioning.

The lease clause above, described as a discussed at the hearing, and Xcel’s responses to Information Requests reiterated in Permit Amendment discovery, should be sufficient to trigger scrutiny, production of decommissioning information, and demonstration of financial assurance.

The Commission did not “acknowledge its error in finding the application substantially complete without a decommissioning plan.” Order Amending, p. 11. “[t]he Commission noted that parties had the authority to request the relevant information via discovery.” *Id.* AFCL did request this information, attempting to assure that decommissioning information was in the record, and the response to AFCL IR 16 requesting specifics to sections 10.10 2 and 10.10.3 was:

Freeborn Wind will comply with the terms of the Site Permit as it relates to the preparation, content and distribution of a decommissioning plan. See Section 11.0 of the Draft Site Permit.

Exhibit J, Freeborn Wind Hearing Exhibit AFCL 21, IR 16, Dan Litchfield (January 12, 2018).

That pushes compliance to “after-the-fact” production, and there is no opportunity for public and party review.

Commerce and the Commission have thus far disregarded the application filing requirements of Minn. R. 7845.0500, and did not correct this error prior to issuing a permit. The

Commission claims that it has taken “remedial measures,” but “after-the-fact” production is not sufficient. Now is the time to correct these errors.

The Commission’s Order did not require provision of decommission information prior to granting of the permit, a production which is required under the rules for LWECS applications. Minn. R. 7845.0500, Subp. 13. Whether the decommissioning plan proposed is adequate is an issue of material fact, as the plan has not been reviewed and vetted by parties, the public, or agencies. Another issue of material fact is whether the company is sufficiently locked in to do the decommissioning in light of the “out” in the lease contracts whereby if the owner does not decommission, the landowner would decommission the equipment on that parcel and seek compensation from the project owner. Also an issue of material fact is whether the cost estimate is adequate, particularly where it is roughly one-half of the cost estimate of other Xcel Energy decommissioning estimates. How specifically will decommissioning be funded, and the financial assurance for decommissioning is another issue of material fact.

The Commission’s rules have, for over 20 years, required that decommissioning information be included in any application for a wind site permit. Minn. R. 7854.0500, Subp. 13. In practice, however, the Commission and the Environmental Quality Board before it, and the Department of Commerce, have for over 20 years abjectly ignored this rule! The Commission has declared applications complete without the information required. Commerce has written into its draft Permit provisions allowing this information to be provided after issuance of a permit, contrary to the rule. For the Freeborn Wind siting docket, in both the contested case and the PUC’s consideration, both the ALJ and PUC staff tried to shift this burden of production to AFCL, and allowed the project to be permitted without it. At this point, the decommissioning plan should be carefully reviewed by the parties, public, and agencies.

The cost of decommissioning is an issue of material fact. The Freeborn Wind decommission estimate stated in the February 2019 “Decommission Plan” is not consistent with other wind project decommissioning estimates:

Freeborn Decommissioning Plan	
Cost Estimate Breakdown (February 2019)	
Turbine sites (100 sites)	
Dismantle turbines	\$ 7,251,413
Trucking/Haul Off	\$13,514,800
Foundation removal (4' depth)	\$ 1,074,267
Site Civil Work Removal	\$ 3,480,635
Cement Stabilized Material Haul Off (replace with black dirt)	<u>\$ 2,494,706</u>
Total	\$27,815,821
Collection System	
Remove MV cable (≥ 4 ft below grade)	\$ 1,016,100
Other Misc.	
Repairs to drain tile & ditches from crossings	\$ 270,000
O&M Building removal	\$ 89,700
Mobilization	\$ 797,339
General conditions	<u>\$ 1,626,408</u>
Total	\$ 2,783,447
Alternates	
Scrap Value of Components	-\$5,507,080
Final estimate:	\$26,108,288
	\$261,083 per turbine

Xcel Application, Appendix J, p. 7 of 8.

For Palmers Creek, the Commission accepted a cost estimate that was not itemized, with a cost estimate for decommissioning:

Based on the current estimate, the cost of decommissioning is \$7,385,822 with a potential scrap return value of \$445,500. These anticipated costs shall be reviewed and updated every five years by the Applicant.

Exhibit F, p. 2 of 3, Palmers Creek Decommissioning Plan, 18 turbines (IP-6979/WS-17-265).

For the Nobles wind project, now owned by Xcel, the decommissioning estimate is:

In the 2010 Remaining Lives Filing, E002-D-10-173, the Commission approved a net salvage rate of -8.7% to be used for the project. This means that an additional 8.7% of the value of all the project’s assets will be recovered as part of the ratepayers’ service rate. These funds collected for removal and restoration are included in the accumulated reserve for the project, but tracked separately from the reserve for the asset itself. A conservative estimate for a decommissioning expense is approximately four-hundred forty-five thousand dollars (\$445,000) per turbine (2009 dollars).¹

Exhibit G, Nobles decommissioning cost. (IP-6646/WS-09-584).

For Next Era’s Lake Benton decommissioning, the cost estimate is:

3.0 COST ESTIMATE

1.0 Turbines and Towers	Cost Estimate
1.1 Dismantle Turbine & Towers	\$ 5,000,000
1.2 Removal of Transformers	\$ 200,000
2.0 Tower Foundations	
2.1 Foundation Removal, Disposal and Grading	\$ 1,200,000
2.2 Transformer Pad Removal and Disposal	\$ 125,000
3.0 Other Structures	
3.1 MET Towers, O&M Building Salvage, Fence Removal	\$ 50,000
3.2 Grading	\$ 100,000
4.0 Tower Access and Site Roads	
4.1 Remove Access Roads	\$ 1,000,000
5.0 Collection System	
5.1 Remove Collection System Terminations	\$ 200,000
6.0 Substation	
6.1 Substation Foundations, Fence, Steel and Grading	\$ 300,000
6.2 Substation Equipment	\$ 200,000
7.0 Mobilization/Demobilization	
7.1 Mobilization/Demobilize	\$ 300,000
8.0 Project Salvage Value	
8.1 Project Steel Salvage Value	(\$ 2,200,000)
TOTAL:	\$ 6,475,000

Exhibit H, p 4 of 8, Lake Benton Decommissioning Plan (IP-6903/WS-18-179).

For Pleasant Valley, another Xcel owned project”

A conservative estimate for a decommissioning expense is approximately two-hundred ninety thousand dollars (\$290,000) per turbine (2015 dollars).

Exhibit I, p. 2 of 3, Pleasant Valley decommission cost estimate (IP-6828/WS-09-1197).

The Freeborn Wind decommissioning cost estimate is quite different than other decommissioning cost estimates. Financial assurance also must be carefully vetted.

All aspects of the decommissioning plan should be fully reviewed in a contested case proceeding. The adequacy of decommissioning plans is a material issue of fact, the manner in which it will be done, whether the land will be restored to its previous condition, how much it will cost, and financial assurance, particularly because leases include potential shifting of responsibility to lessors, all are material issues of fact. The Commission now has some

experience with decommissioning of wind project, and should review this plan in light of that experience.

V. COMPLAINT PROCESS PROPOSED IS INADEQUATE

The Commission’s complaint process is broken. The Commission has long been aware that there have been problems with the standard complaint process and has dealt with the Bent Tree, Big Blue, and other projects for years, including the MinnCan pipeline which had numerous complaints filed. Complaints are often not addressed, and it has taken too many years for complaints that are not resolved to work their way to a meeting before the Commission. See Testimony of Bernie and Cheryl Hagen, Public Hearing Tr. p. 108-111; p. 112-115.

The complaint process proposed in the draft permit for this project is the same boilerplate language used in every wind project, and there have only been nominal revisions over time. Davis, Tr. Vol. 2, p. 180, l. 14-17. The Draft Site Permit includes the complaint process, located at the very end of the document. Freeborn Wind Hearing Exhibit EERA-8, Draft Site Permit – p. 72 of 77. This complaint process is found at the end of each permit issued and if a permit is issued in this docket, a copy of the permit is mailed to “everyone that is notice of the issuance of the permit.” Freeborn Hearing Transcript, Davis, Vol. 2, p. 179-180.

The complaint process is complex and ostensibly is subject to revision:

Q: What would it take to initiate a review of the complaint process?

A: This is when you would provide a comment on it. It’s part of the draft site permit, so—

Q: So right now?

A: So this is when comments should be submitted, yeah.

Davis, Freeborn Wind Tr. Vol 2, p.180. Comments were submitted, but apparently ignored.

A complaint system reliant on a person’s knowledge of how to make a complaint is

inadequate. Commerce did not engage the public and produce a workable complaint process, and in this Freeborn case, Freeborn proposes the process, with no changes.

Complaints regarding interference with over-the-air signal are even more problematic, hence KAAL's intervention in the initial hearing, because unless someone identifies the wind project as the source of the interference and knows how to and does in fact make a complaint under the permit's complaint process, there may be no record of the problem. Commerce is not the recipient of complaints from the television signal, and people experiencing over-the-air interference may not know why they have interference. Freeborn Evidentiary Hearing, Davis, Tr. Vol. 2, p. 181, l. 13- p. 183, l. 8. Although Davis does not know of any complaints, Cheryl Hagen testified regarding their trouble with over-the-air TV reception due to Bent Tree at the Public Hearing. Testimony of Cheryl Hagen, Freeborn Public Hearing Tr. p. 108-109.

Xcel filed its "Complaint Handling Procedures" late Friday, November 8, 2019, claiming that it is in response to permit "Section 9.0 Complaint Procedures" but it is nothing more than a cut and paste of Attachment A to the Permit, and lists Dan Litchfield (of Invenergy) as the party to be contacted prior to construction! See COMPLIANCE FILING--SECTION 9.0-PRE-CONSTRUCTION-COMPLAINT PROCEDURES , November 8, 2019 ([201911-157375-01](#)). Xcel Energy is now the owner – how is this reference to Invenergy personnel as a contact person correct?

No permit amendment should be issued without thorough review and revision of the complaint process by the public, parties, and agencies.

VI. AFCL REQUESTS A CONTESTED CASE PROCEEDING

Amendment of the Freeborn Wind permit should not be approved until the permit amendment request has been reviewed and vetted, with newly provided noise studies, shadow

flicker, site plan, and decommissioning plans, and other Xcel Energy filings are made public and subject to a contested case proceeding. Freeborn Wind, has provided new information regarding noise and shadow flicker modeling, new layout/site plan, 2019 project setbacks, “updated SPA Figures 1-17,” and the new application, together with “Compliance Filings” filed since, must be vetted as the initial application was – this can only be done in a contested case proceeding.

Freeborn Wind thus far has not demonstrated that it could comply with the permit. As the permit amendment applicant, Xcel Energy has the burden of production and the burden of proof. Freeborn via Xcel has now provided additional information that was not available at the time of the initial application and the initial contested case. Freeborn is proposing to increase the size of the turbines and move many turbines. No decommissioning information was provided in the initial application, and some decommissioning information was provided in February 2019, subsequent to the initial granting of the site permit, long after the public hearing had ended. Cost estimates vary considerably from that of other decommissioning cost estimates that Xcel and other developers have produced. While it has provided information and made assertions of compliance, the assertions have not been vetted. Freeborn Wind has not demonstrated that it can build the project when considering the many terminated leases, the project as originally proposed, and the planned permit amendment changes.

AFCL requests an extension of two weeks to address the many filings of Xcel Energy on Friday, November 8, 2019 which do address substantive issues regarding this permit.

AFCL asks that the Commission refer this permit amendment request to the Office of Administrative Hearings for a continuation of the contested case to review the many issues of material fact. The Commission should not amend the permits until this new information has been vetted and reviewed, discovery propounded, necessary land rights shown to be acquired,

and the dockets opened for comment to be reviewed by parties, Commerce, and the public, in a contested case hearing. Freeborn Wind has the burden of proof and production and must make its demonstration that it can comply with the permit. This must be done in a public process, a hearing held, and then deliberated the Commission, all as contemplated by the Commission's adoption of ALJ Recommendation Findings 243 and 244.



November 12, 2019

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