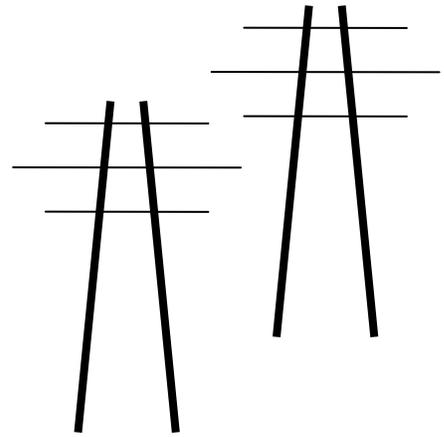


Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



DATA PRACTICES ACT REQUEST

November 25, 2019

Daniel Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

via email and eDockets

John Wachtler
Energy Program Director
Commerce – EERA
85 – 7th Place East, Suite 500
St. Paul, MN 55101

via email and eDockets

RE: **DATA PRACTICES ACT REQUEST – COMMISSION AND COMMERCE**
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: IP-6946/WS-17-410

Dear Mr. Wolf:

Association of Freeborn County Landowners once more requests the Commission refer the Freeborn Wind siting permit docket to OAH for a contested case hearing on the many material issues of fact, in particular the adequacy and sufficiency of Xcel Energy's Permit Amendment Request/Application filings on August 20, 2019, and its Compliance Filings on November 8, 2019. The specifics have been set forth in AFCL's Initial and Reply filings earlier this month.

In an apparent "it's better to ask forgiveness than ask permission," Xcel Energy announced in a letter Friday that it intends to begin construction on the Freeborn Wind project in December, 2019, apparently predicated on its November 8, 2019 and August 20, 2019 filings. Friday's announcement is premature. AFCL strongly objects to Xcel Energy's intent and presumptions.

The Commission has consistently prohibited “construction,” and has regarded activity including storage as construction. Further, Freeborn County’s Ordinance prohibits an O&M building in that area, relevant because the Commission appears to be shifting towards reliance on the County Ordinance as support (and distancing itself from the Small Wind Standards). The plan and profile filed in the “Compliance Filings” were filed in the WS-17-410 docket – the O&M building is incorporated into that docket.

The Commission Noticed a comment period, Initial Comments have been filed and Reply Comments were due last week. The Commission has yet to issue staff briefing papers or a meeting notice, or make its decision on what type of proceeding to utilize for this permit amendment request.

Xcel’s “asking forgiveness is easier than seeking permission” letter, announcing its intention to begin construction at this time and preparing for December work, again, is premature, because it is unknown how long it will take for the Commission to make a decision, much less complete the review process, whatever it may be. A blanket is not necessary. Gravediggers, septic installers, and others have long established practices to dig in the winter.

Yes, beginning construction at this point is “at their risk.” But is Xcel’s “forgiveness” approach one that should be sanctioned... or sanctioned? AFCL requests that the Commission instruct Xcel Energy to postpone activities until the Commission has made its decision regarding the permit amendment request, after public process, independent verification, and review of the specifics of Xcel’s permit amendment request.

Regarding start of construction in December 2019:

Per the Permit, filings are to be completed at least 14 days prior to a pre-construction meeting as set forth in Permit Sections 5.1; 5.2.1; 5.2.9; 5.2.10; 5.2.12; 5.2.16; 5.5.2; 7.2; 7.3; 7.4; 7.5.1; 8.1; 10.1; 10.2; 10.3; and 10.10. Noise modeling is to be filed at least 60 days prior to the pre-construction meeting, and the Decommissioning Plan at least 60 days prior to the pre-operational meeting. Xcel’s revised Application was filed August 20, 2019, Compliance Filings on November 8, 2019, and filings on the subjects of those Permit Sections listed above were filed on those days.

As of yet, there has been no public review, no agency independent verification and review, and no Commission determination of the sufficiency of these filings. AFCL and many others have filed comments and evidence entered by Affidavit calling the adequacy of those filings into question and raising material issues of fact, particularly regarding noise, shadow flicker, decommissioning, and the complaint process.

The Commission adopted Findings regarding Freeborn Wind’s demonstration of compliance with noise standards and the floor of public process regarding Freeborn’s noise modeling:

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; see also Minn. Stat. §216E.08 Public Participation.

One example of the inadequacy of the filings is regarding Shadow Flicker, where the modeling provided by the Applicants shows many "receptors" will likely experience more than 30 hours of shadow flicker. The Permit states:

Permit Section 7.2 Shadow Flicker

Should shadow flicker modeling identify any residence that will experience in 30 hours, or more, of shadow flicker per year, the Permittee must specifically identify these residences in the Shadow Flicker Management Plan. If through minimization and mitigation efforts identified in the Shadow Flicker Management Plan the Permittee is not able to reduce a residence's anticipated shadow flicker exposure to less than 30 hours per year a shadow flicker detection systems will be utilized during project operations to monitor shadow flicker exposure at the residence. The Shadow Flicker Management Plan will detail the placement and use of any shadow flicker detection systems, how the monitoring data will be used to inform turbine operations, and a detailed plan of when and how turbine operations will be adjusted to mitigate shadow flicker exposure exceeding 30 hours per year at any one receptor. The results of any shadow flicker monitoring and mitigation implementation will be reported by the Permittee in the Annual Project Energy Production Report identified in Section 10.8 of this Permit.

The Applicant is to "specifically identify these residences in the Shadow Flicker Plan," and it has not done so. Further, there has been no determination of the adequacy and sufficiency of the Shadow Flicker information provided. AFCL has reviewed the shadow flicker numbers and found that many homes are recipients of a great excess of 30 hours. Do the math! Again, this review and determination must be done in a public process, at the very least, that process set out in FoF 243 and 244 above.

DATA PRACTICES ACT REQUEST TO PUC AND COMMERCE-EERA

1. AFCL requests all documentation of notice, planning, and scheduling of any and all pre-construction meetings for the Freeborn Wind project by and between the Commission and Commerce with Freeborn Wind (Invenergy and/or Xcel) and Freeborn County.

2. **AFCL AGAIN requests notice, of at least 10 days, of the time and location of any and all pre-construction meetings for the Freeborn Wind project. AFCL is a party in this proceeding.**
3. AFCL requests all documentation of review, correspondence, memos, by Commission and/or Commerce, to and/or from the Commission, and to and/or from Freeborn Wind (Xcel Energy and/or Invenergy), about Freeborn Wind's (Xcel Energy and/or Invenergy) Permit Amendment Request/revised Application of 8/20/2019.
4. AFCL requests all documentation, between 6/8/2019 and the present, of review, correspondence, memos, by Commission and/or Commerce, to and/or from the Commission, and to and/or from Freeborn Wind (Xcel Energy and/or Invenergy), regarding the subjects of, and of and to and from Freeborn Wind (Xcel Energy and/or Invenergy), about Freeborn Wind (Xcel Energy and/or Invenergy)'s filed Compliance Filings, of 11/8/2019.
5. AFCL requests all documentation, between 6/8/2019 and the present, of review, correspondence, memos, by Commission and/or Commerce, to and/or from the Commission, and to and/or from Freeborn Wind (Xcel Energy and/or Invenergy), regarding Freeborn Wind (Xcel Energy and/or Invenergy).
6. AFCL requests all documentation of review, correspondence, memos, by Commission and/or Commerce, to and/or from the Commission, and to and/or from Freeborn Wind (Xcel Energy and/or Invenergy), regarding Freeborn Wind noise monitoring and the noise modeling filed 8/20/2019, including but not limited to applicant's use of 0.5 ground factor/effect and 0.0 ground effect.
7. AFCL requests all documentation of review, correspondence, memos, by Commission and/or Commerce, to and from the Commission, and to and from about Freeborn Wind (Xcel Energy and/or Invenergy), regarding Freeborn Wind's shadow flicker modeling filed on 8/20/2019.
8. AFCL requests all documentation of review, correspondence, memos, by Commission and/or Commerce, to and from the Commission, and to and from about Freeborn Wind (Xcel Energy and/or Invenergy), regarding Freeborn Wind's decommissioning plan filed 2/11/2019.
9. AFCL requests all documentation of review, correspondence, memos, by Commission and/or Commerce, to and from the Commission, and to and from about Freeborn Wind (Xcel Energy and/or Invenergy), regarding Freeborn Wind's proposed Complaint Process filed on 11/8/2019.

If you have any questions or require anything further, please let me know.

Very truly yours

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law

cc: Association of Freeborn County Landowners
All parties via eDockets