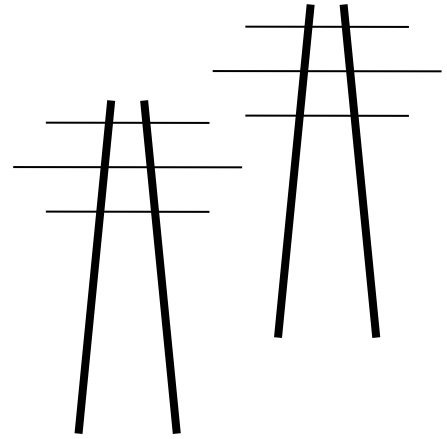


Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
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1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



January 1, 2020

Denise Wilson
Director, Environmental Review Program
Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155

via email: denise.wilson@state.mn.us

RE: Petition for an EAW – Association of Freeborn County Landowners
**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 Ms. Wilson:

Attached please find Association of Freeborn County Landowners' Petition for an Environmental Assessment Worksheet as provided by Minn. R. 4410.1100, including the Petition with over 380 Minnesota signers and material evidence of significant environmental effects to accompany the petition demonstrating potential for environmental effects. Minn. R. 4410.1100.

Association of Freeborn County Landowners have repeatedly requested environmental review, required by MEPA for a large electric generation facility over 50 MW, and the Public Utilities Commission has consistently denied our requests, proceeding toward a Permit Amendment Request without requisite environmental review.

In addition to this filing emailed direct to you, I have notified Xcel Energy in writing via email to both outside counsel working on this project. Minn. R. 4410.1100, Subp. 4.

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
Christina Brusven, Lisa Agrimonti, Fredricksen & Byron CBrusven@fredlaw.com,
LAgrimonti@fredlaw.com

CERTIFICATE OF SERVICE

PETITION FOR ENVIRONMENTAL ASSESSMENT WORKSHEET

Minn. R. 4410.1100

XCEL ENERGY'S FREEBORN WIND PROJECT

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; OAH Docket: 80-2500-34633

I, Carol A. Overland, certify that on the 1st day of January, 2020, I served the Association of Freeborn County Landowner's Petition for Environmental Assessment Worksheet, to the following parties on the Service List, attached, as required by Minn. R. 4410.1100, Subp. 4, with complementary copies to Public Utilities Commission (likely RGU) and Department of Commerce – EERA..

January 1, 2020



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**ATTORNEY FOR
ASSOCIATION OF FREEBORN
COUNTY LANDOWNERS**

SERVICE LIST

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FREEBORN WIND PROJECT PROPOSER – XCEL ENERGY:

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Courtesy copy to:

MINNESOTA PUBLIC UTILITIES COMMISSION

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COMMERCE-EERA

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PETITION FOR ENVIRONMENTAL ASSESSMENT WORKSHEET

Minn. R. 4410.1100

XCEL ENERGY'S FREEBORN WIND PROJECT

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; OAH Docket: 80-2500-34633

The Association of Freeborn County Landowners and over 380 Minnesota residents hereby Petition the Environmental Quality Board, under Minn. R. 4410.1100, Subp. 3(b), and ask that the Environmental Quality Board forward this Petition to the Public Utilities Commission, as Responsible Governmental Unit, for a decision regarding preparation of an Environmental Assessment Worksheet (Minn. R. 4410.4500) for the Freeborn Wind, LLC, wind project, a “project” as defined by Minn. R. 4410.0200, Subp. 58. The Environmental Assessment Worksheet should then be utilized by the Commission to address whether a full Environmental Impact Statement is required to review the potential of substantial environmental effects. Minn. Stat. ch. 116D.

I. LEGAL BASIS FOR ENVIRONMENTAL REVIEW

The Public Utilities Commission, as the governmental unit with primary permitting authority, is the logical governmental unit, although there are other governmental units with lesser responsibility. Minn. R. 4410.0500 and 4410.4300. Because of the nature or location of the proposed project, the project has potential for significant environmental effects. Minn. R. 4410.1100, Subp. 6. As an electric generating facility over 50 MW, significant environmental

effects are legally presumed, and a mandatory EAW and EIS is required. Minn. R. 4410.4300 and Minn. R. 4100.4400. As a matter of policy, agencies have a responsibility to conduct environmental review for projects with potential for environmental impacts. Minn. Stat. §116D.03, Subd. 2; Minn. Stat. §116D.04, Subd. 2(a). Minn. Stat. §216F.05(4) mandated adoption of rules for Large Wind Energy Conversion Systems (LWECS) and MEPA compliance, specifically mandating “requirements for environmental review of the LWECS,” but yet no requirements **FOR** environmental review of LWECS were adopted. Over the twenty-plus years that LWECS have been permitted by the EQB and Public Utilities Commission, wind projects have evaded and avoided environmental review. Minn. R. 7854.0500, Subp. 7 details application requirements, where applicants provide information regarding impacts from applicants’ perspective, with this declaration in the rule ultimately adopted:

The analysis of the environmental impacts required by this subpart satisfies the environmental review requirements of chapter 4410, parts [7849.1000](#) to [7849.2100](#), and Minnesota Statutes, chapter 116D. No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.

Minn. R. 7854.0500, Subp. 7.

The Freeborn Wind project is not exempted under Minn. R. 4410.4600. An application is not environmental review or Alternative Review under Minn. Stat. §116D.04, Subd. 4a; see also Minn. R. 4410.3600, Subp. 1 or 2. Under MEPA, the Commission must perform environmental review and consider environmental consequences when deciding whether to issue a permit. Id.

MEPA also specifically requires governmental agencies to consider environmental consequences when deciding whether to approve a proposed “project.” *Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm’rs*, 713 N.W.2d 817, 823 (Minn. 2006). MEPA contemplates preparation of two principal categories of project-specific review reports—an EAW and an EIS. An EAW is a brief preliminary report that sets out the basic facts necessary to determine whether the

proposed project requires the more rigorous review of an EIS. Minn. Stat. § 116D.04, subd. 1a(c).

In the Matter of Minnesota Power's Petition for Approval of the EnergyForward Resource Package, p. 5-6, A19-0688, A19-0704, PUC Docket E015/AI-17-568 (December 23, 2019). In this EnergyForward case, the Commission failed to address the environmental impacts of a resource plan which included construction and operation of a gas plant in Wisconsin.

In this case, the Freeborn Wind project did not require an Environmental Assessment as a part of a Certificate of Need review because the project was approved by the Commission as part of a resource acquisition plan, similar to a resource plan, and thus no Certificate of Need was required. Similar to the EnergyForward Resource Package, no environmental review has been performed for this Freeborn Wind project.

The Commission has been ordered by the Appellate Court to complete environmental review of the potential impacts of the Nemadji power plant as part of that resource plan. *In re Applications of Enbridge Energy*, 913 N.W. 2d 12 (Minn. App. 2019), *review denied* (Minn. Sept. 17, 2019); see also *In the Matter of Minnesota Power's Petition for Approval of the EnergyForward Resource Package*, A19-0688, A19-0704, PUC Docket E015/AI-17-568 (December 23, 2019). The Freeborn Wind project is yet another example of the Commission's failure to perform environmental review for a project acquired in a way that did not require a Certificate of Need, which did not trigger an Environmental Assessment. The Freeborn Wind project, like the Nemadji power plant, must have environmental review and comply with the Minnesota Environmental Policy Act. Minn. Stat. ch. 116D.

Information provided by an applicant does not in and of itself constitute environmental review under MEPA. An EAW is essential, and this Petition is filed at this late stage because

AFCL's Motion/Petition for EIS (motion practice, not a Minn. R. 4410 Petition) was denied at the Commission meeting on December 19, 2019.

The state has no LWECS siting rules and there are no LWECS-specific siting standards, only small wind standards, developed informally, and not as a rulemaking. Exhibit A, Order Establishing General Wind Permit Standards, PUC Docket G,E-999/M-07-1102. The Commission has also disregarded the public process mandate of the Power Plant Siting Act, environmental law in Minnesota, and until this Freeborn Wind docket, the applicability of the not-wind-specific siting criteria of the Power Plant Siting Act. Minn. Stat. §216E.08 (public participation mandate, authorization of advisory task force, etc.); see Minn. Stat. §216E.0, Subd.7 (power plant and transmission siting criteria, much inapplicable to wind); Exhibit B, Order Granting Permit (December 19, 2018).

The Freeborn Wind project, at up to 84 MW of turbines, and with changed plans for 31 larger V120 turbines, a project covering 21,313 acres, newly provided noise and shadow flicker modeling and requests for several permit amendments, is expected to have significant environmental impacts, that much has been demonstrated. Exhibit C Freeborn Wind ALJ Recommendation (May 14, 2018); Exhibit D, Xcel Energy Application for Permit Amendment (8/20/2019); Exhibit E, Xcel Compliance Filings (11/8/2019); Exhibit F, Xcel Compliance Filings (12/6/2019). Potential material environmental impacts are described throughout the record. Compliance with the state noise standard, for example, has not been demonstrated, as the new noise study and shadow flicker study have been filed but not publicly vetted.

Despite this probability of impacts, there has been no Environmental Impact Statement or Environmental Assessment Worksheet. There has been no public hearing or contested case regarding the voluminous Xcel Energy Permit Amendment application (8/20/2019) and

compliance filings (11/8/2019 and 12/6/2019) proposing the 31 larger Vestas V120s, noisier turbines. In particular, there has been no environmental review or public process regarding the recent noise modeling using an indefensible 0.5 ground factor input submitted August 20, 2019, after the December 19, 2018 permit was granted, and after noise modeling accompanying the initial application with the correct 0.0 ground factor could not demonstrate compliance with state noise standards. The Commission has notice that use of 0.5 ground factor is not appropriate for modeling noise, which raises questions of likely non-compliance with MPCA's noise standard (Minn. R. 7030.0400). Exhibit G, AFCL Motion for Contested Case and Environmental Review (12/11/2019)(denied 12/19/2019). New shadow flicker modeling shows 6 or more homes receiving over 30 hours annually. Exhibit D, Xcel Site Permit Amendment Application, Attachment G, Shadow Flicker. Other environmental impacts are addressed in paragraph E, below, and in supporting material evidence, attached. Environmental review is required by MEPA. Minn. Stat. §116D.03, Subd. 2; Minn. Stat. §116D.04, Subd. 2a.

The Freeborn project presents demonstrated substantive environmental impacts, including noise and shadow flicker, aesthetic and visual, wildlife, and socioeconomic impacts of decreased property marketability and valuation. Exhibits D, E and F, Xcel's Permit Amendment filings. The sheer volume of these filings, detailing the project and its potential substantial effects, requires public iterative review for completeness, predictions, assumptions, accuracy, impacts and mitigation options.

As of this date, all governmental permits have not yet been granted, and the project is not exempted from environmental review. See Exhibit E, Compliance Filing Section 5.5.2 (201911-157383-01); Minn. R. 4410.4600, Subp. 2(B). The PUC has deliberated and made its decision on December 19, 2019, but as of January 1, 2020, the Final Order has not been eFiled on the

Commission's eDockets system. Other permits not yet granted include Township over-size (OS) and over-weight (OW) permits; County Utility Permit, County Access Permit. See Exhibit H, permit list, Invenergy App. p. 111-113 (20176-132804-01). Township ordinance and road agreement require environmental review, and EAW or EIS. Minn. R. 4410.0200, subp. 65; Minn. Stat. §116D.03; Minn. Stat. §116D.03. Construction may not begin and additional permits may not be issued until the issues raised by this Petition have been settled. Minn. R. 4410.3100, Subp. 1. This Petition and supporting material evidence demonstrates that because of the nature and location of the project there is potential for significant environmental effects.

As Petitioners, the Association of Freeborn County Landowners, a full party in the Commission's Freeborn Wind docket, and the many people who have signed AFCL's Petition for an Environmental Assessment Worksheet, ask that the EQB refer this Petition and supporting material evidence to the Public Utilities Commission and/or London and Oakland Townships as RGU(s) and that an EAW be completed to determine whether an Environmental Impact Statement is necessary. This Petition and evidence herein meets the standards and criteria of Minn. R. 4410.1100. The Public Utilities Commission has not performed necessary environmental review and has not complied with the Minnesota Environmental Policy Act.

II. REQUIREMENTS OF EAW PETITION PROCESS – CONTENT

Association of Freeborn County Landowners (AFCL) provides the following Petition content information and attached material evidence, together with over 380 signatures of Minnesota residents and landowners, as required by Minn. R. 4410.1100:

A. Description of Proposed Project

The Freeborn Wind project is a Large Wind Energy Conversion System. Minn. Stat. §216F.01, Subd. 2. The project footprint encompasses 21,313 acres in Freeborn County that

Xcel has “secured.” Exhibit D, p. 3, Xcel Site Permit Amendment Application (August 20, 2019). In Xcel’s Permit Amendment filing, it quotes the original Site Permit:

The Freeborn Wind Farm, when fully constructed and operational will have a nameplate capacity of up to 200 MW, of which, 84 MW will be located in Freeborn County, Minnesota and the remaining 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.

Id, p. 15. The project has been acquired by Xcel Energy, and the acquisition was approved by the Commission. As above, Xcel requested an amendment to multiple sections of the Freeborn Wind site permit, including the project description section of the permit:

The Freeborn Wind Farm will be a 200 MW nameplate capacity LWECS, 82 MW of which will be located in Freeborn County, Minnesota. The LWECS portion in Minnesota will consist of 10 Vestas V110 and 31 Vestas V120 turbines. Both turbine models are 2 MW in size.

Id.; see also Exhibit C, ALJ Recommendation of Denial of Permit, p. 14, Site Location and Characteristics (footnotes omitted). In Xcel’s Amendment Request, Xcel included a noise study, shadow flicker study, and many maps showing the potential impacts of the project over the 21,313 acre geographic area of the project footprint and beyond. See Exhibit D, Site Permit Amendment Application and Attachment E Noise, F Shadow Flicker, J Decommissioning.

After filing the Site Permit Amendment Request, Xcel filed voluminous “Compliance Filings” on November 8, 2019 and December 6, 2019. Exhibit E, Compliance Filings (November 8, 2019); Exhibit F, Compliance Filings (December 6, 2019). At the time the initial Site Permit was issued, AFCL objected to the Commission’s issuance of a site permit without crucial environmental documents in the record, diversion of production of these filings to a private setting, Pre-Construction meetings, without proper review, and postponing filing of these documents until just prior to the private “Pre-Construction” meetings. See e.g. Exhibit I, p. 13-

15, AFCL Reconsideration (January 9, 2019); see also Exhibit J, AFCL Comment including Motion for Remand (March 13, 2019).

These Xcel “Compliance Filings” also include the first filing of a proposed Complaint Process on November 8, 2019, and a December 6, 2019 filed Summary of a Pre-Construction meeting held November 25, 2019. Exhibit F, Compliance Filing (12/6/2019). The November 25, 2019 meeting was the one for which AFCL had made several prior requests for notification, filed two Data Practices Act requests for scheduling information and notice, together with data requests for environmental and procedural information. Exhibit K, AFCL Request for Notice (4/23/2019); Exhibit L, AFCL Request for Notice 11/25/2019). Commission staff acknowledged AFCL request for notice, but failed to provide notice of meeting to AFCL. Exhibit M, PUC staff email (4/23/2019). Unbeknownst to AFCL, this Pre-Construction meeting was held on November 25, 2019, beginning less than ½ hour after this second written request was sent! AFCL received no notice, and AFCL was excluded from the pre-construction meeting where this information was discussed.

The Xcel Site Permit Amendment Application and the November 8 and December 6, 2019 filings were the first glimpses of the description, location, and nature of impacts of the project as proposed by Xcel Energy, and the differences between this Application for Permit Amendment and the initial Invenergy Application and Site Permit.

Xcel’s request for an amendment, if permitted, would allow a modified siting plan, use of larger Vestas V120 turbines, noisier turbines based on increased size; noisier based on unvetted noise modeling with use of in appropriate ground factor of 0.5 that understates noise; shadow flicker with admittedly at least 6 homes affected by over 30 hours annually of shadow flicker; a decommissioning plan with incomplete and inadequate planning; an inadequate complaint

process; and other changes, none of which have been subject to public iterative vetting or environmental review. The specific permit changes requested are set out in Xcel's Permit Amendment Request. Exhibit D, see e.g., p.15-20, Xcel Site Permit Amendment Request, also Attachment E, 2019 Updated Pre-Construction Noise Analysis; Attachment F, Updated Shadow Flicker Study, et seq.

As of this writing, all required permits, including the Commission's written Order regarding Xcel's Site Permit Amendment Request, have not yet been granted. See Exhibit H, Permits (permit list from Invenergy Freeborn Wind application). Applicant Invenergy's list of permits required. In particular, the Public Utilities Commission's permit is flawed, as no environmental review has been undertaken, and the Commission specifically denied AFCL's several requests as a party for environmental review, most recently a Motion for an Environmental Impact Statement, denied orally on December 19, 2019. No permit has been granted by the townships, which by ordinance and state rule requires that oversize truck use permitting process include environmental review. See Exhibit N, London Township Ordinance 17-1, p. 5-6, Section 3.

The project description as proposed by Xcel Energy is now in the public record, together with Xcel Energy's Site Permit Amendment Application and Compliance Filings.

B. The Proposer of the Project

The project has been sold by its original proposer/developer, Invenergy, to Xcel Energy, and acquisition of Freeborn Wind, LLC was approved by the Public Utilities Commission.

Xcel Energy/Freeborn Wind Represented by:

Christina Brusven

CBrusven@fredlaw.com (612) 492-7412

Lisa Agrimonti

LAgrimonti@fredlaw.com (612) 492-7344

Fredricksen & Byron

200 So. 6th St., Suite 4000
Minneapolis, MN 55402-1425

C. The name, address, and telephone number of the representative of the Petitioners

Carol A. Overland
overland@legalelectric.org (612) 227-8638
Attorney for Association of Freeborn County Landowners
Legalelectric
1110 West Avenue
Red Wing, MN 55066

D. A brief description of the potential environmental effects which may result from the project.

Xcel has requested amendment to many sections of the permit, each of which has potential environmental effects. As Commerce-EERA stated:

The Permittee has specifically requested an amendment to the Site Permit language for Section 2.0 Project Description and Section 3.0 Designated Site, and inclusion of an updated map to reflect the 2019 Project Layout referenced in Section 3.1 Turbine Layout. Additionally, the Permittee has indicated how their amendment request has addressed various sections of the site permit; 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, and Section 10.3 Site Plan.

Exhibit O, Commerce-EERA Comment, 11-12-2019.

In its comments, Commerce-EERA states:

EERA recommends the Commission approve the Permittee's requested amendments to the Freeborn Wind Farm site permit Section 2.0, Section 3.0, and Section 3.1. The anticipated environmental and human impacts associated with the change in turbine technology and change in turbine layout, including a change in location of certain infrastructure, appear to be comparable, or less than, the potential impacts associated with the originally permitted wind turbine models and turbine and infrastructure layouts.

At this time EERA does not recommend the modification or addition of any other permit conditions/sections.

EERA recommends that the Permittee file maps that will more clearly display that turbine locations are appropriately sited to satisfy the 5 RD x 3 RD setback from

non-participating property boundaries, as displayed on updated Figure 4 in Attachment D of the Amendment Request. Specifically, providing a zoomed-in view of turbines 3, 6, 13, 14, 18, 19, 24, 25, 27, 29, 42, and 48, would provide additional reassurance that the appropriate setbacks from non-participating property boundaries are being satisfied.

Id., p. 6.

Commerce-EERA inexplicably recommends blanket granting of Xcel’s request, based on whether impacts are “comparable” with “the potential impacts associated with the originally permitted wind turbine models and turbine and infrastructure layouts.” Commerce-EERA does not address whether the project complies with environmental law and/or standards, and recommends amending the permit despite insufficient environmental information necessitating a request for “reassurance” that setbacks are appropriate for “non-participating” landowners! The law does not distinguish between participating and non-participating landowners. Minn. R. 7030.0400. Impacts are impacts, and the project is or is not in compliance.

This docket before the Public Utilities Commission has similarities with the Nemadji Trails Energy Center (NTEC) docket. As with the Nemadji Trails Energy Center (NTEC) docket at the Commission¹, the ALJ presiding over the Freeborn Wind contested case recommended denial of the applicant’s request because the applicant had not met its burden of proof. As with the Nemadji Trails Energy Center (NTEC) docket², environmental review had been requested directly to the Commission. As with the Nemadji Trails Energy Center (NTEC), after receipt of the ALJ’s recommendation of denial of the permit, the Commission inexplicably, without supplementing the record, without a public hearing, without further contested case proceedings,

¹ PUC Docket E-15/AI-17-568.

² Online at:

<http://mncourts.gov/mncourtsgov/media/Appellate/Court%20of%20Appeals/Standard%20opinions/OPa190688-122319.pdf>

did an about face from the ALJ's Recommendation of denial of the Freeborn Wind permit application and granted applicant's Site Permit. Exhibit B, Order Granting Permit, December 19, 2018. The Appellate Court in both the Enbridge and Nemadji (NTEC) cases found that the Commission had not conducted the requisite environmental review and that the Commission erroneously held that environmental review was not necessary, and the court ordered environmental review.

The Association of Freeborn County Landowners' appeal of the Freeborn Wind PUC Order of May 10, 2019 has been stayed pending Commission action on Xcel's Site Permit Amendment Request (Court File A19-1195).

In the Commission's December 19, 2018 Freeborn Wind Order, there was a directive modifying two Findings of Fact from the ALJ's Recommendation and requiring public process. 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.

Exhibit B, Order Granting Site Permit, Modifications to ALJ Report, December 19, 2018. Those Findings 243 and 244, as above, have not been amended or deleted in subsequent orders.

Potential environmental effects which may result from the project include, but are not limited to, those set out in Xcel Energy's Permit Amendment application and subsequent filings and those raised by Intervenors and the public:

PROBABLE NOISE EXCEEDENCES: The project as proposed by Invenergy did not demonstrate that it could comply with noise standards. Exhibit C, Freeborn Wind ALJ Recommendation (May 14, 2018); Minn. R. 7030.0400 (Noise Standard). The Administrative Law Judge recommended the project be denied:

SUMMARY OF RECOMMENDATIONS

The Administrative Law Judge concludes that Freeborn Wind has failed to demonstrate that the proposed Project will meet the requirements of Minn. R. 7030.0040, the applicable Minnesota Noise Standards. Therefore, the Administrative Law Judge respectfully recommends that the Commission either deny Freeborn Wind's Application for a Site Permit, or in the alternative, provide Freeborn Wind 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.

Exhibit C, p. 2.

With its permit amendment request, Xcel Energy filed noise modeling utilizing a ground factor input of 0.5, rather than the 0.0 ground factor input utilized in the Invenergy application noise modeling and throughout the contested case. Exhibit D, Xcel Energy Application for Permit Amendment (8/20/2019); Exhibit C, Freeborn Wind ALJ Recommendation (May 14, 2018); see also Exhibit P, Invenergy Application, Appendix B, p. 12 (0.0 ground factor in original Invenergy application). Use of the 0.5 ground factor is improper for elevated noise sources and understates the noise and probable impacts. Exhibit G, Motion for Contested Case and Environmental Review, p. 10 and Testimony of Hankard; Exhibit Q, AFCL Comment and Request for Contested Case, Testimony of Hankard and Schomer (November 12, 2019)

AFCL has provided actual and constructive notice that the noise modeling is improper, understating the potential noise impacts by using an improper ground factor, 0.5, rather than the

ground factor of 0.0 for modeling noise of elevated noise source to a receptor located on the ground. Exhibit Q, AFCL Comment and Motion for Contested Case (11-12-2019) (addressing material issues of fact and potential for substantial impacts); Exhibit G, AFCL Motion for Contested Case; Exhibit J, AFCL Comment and Motion for Remand. AFCL also provided actual and constructive notice of potential for noise impacts by entering the Bent Tree Noise Modeling, both Phase I and Phase II, into the Freeborn Wind hearing record. The Bent Tree noise studies found the noise standard was exceeded, that the project was not compliant, and the noise standard was violated by V82 turbines when measured at 1,150 and 1,525 feet from residences of families that had complained of noise. Exhibit R, Bent Tree Noise Monitoring Study, Phase II (V82 turbines pps. pps.6, 12, 21; 1,150 and 1,525 feet from nearest turbine p. 10) (2nd Noise Monitoring Report to demonstrate noise exceedences) see also Minn. R. 7030.0400. The families in those homes were bought out by the utilities, and settlement agreements entered into the record. See Bent Tree PUC Docket ET6657/WS-08-573, Settlement Agreements filed April 19, 2018; PUC Dismissed Complaints with Conditions June 5, 2018. The Bent Tree exceedences of the noise standard verified by two noise monitoring studies and Settlement Agreements are demonstrations of potential impacts of wind turbines that move into a community and why preventative and precautionary siting is crucial.

No independent modeling has been performed in the Freeborn Wind docket, and no modeling with the appropriate ground factor of 0.0 has been submitted by Invenergy or Xcel Energy following the ALJ's Recommendation of Denial (May 14, 2018).

Xcel states in its Permit Amendment Petition that:

The closest turbine to a participating residence is Turbine T-23, which is approximately **1,096** feet from the nearest residence. The nearest non-participating residence is located approximately **1,367** feet from Turbine T-29, the nearest turbine.

Exhibit D, Xcel Petition for Permit Amendment, p. 17³ (emphasis added).

The Bent Tree noise exceedences measured at residences 1,150 and 1,525 feet from the nearest turbine, important distances to note because Bent Tree is a wind project which uses smaller and less noisy turbines. Exhibit R, Bent Tree Noise Monitoring Study, Phase II (V82 turbines pps. pps.6, 12, 21; 1,150 and 1,525 feet from nearest turbine p. 10); see also Minn. R. 7030.0400, Noise Standards. AFCL has provided actual and constructive notice to the applicants, Commerce, and the Commission in multiple filings that given Bent Tree non-compliance with the noise standard at 1,150 and 1,525 feet from smaller turbines, there is potential for noise non-compliance, potential for substantial effects, at the Freeborn distances of 1,000 “setback” and Xcel’s reported 1,096 feet and 1,367 feet between residences and larger turbines. See Exhibits G, I, J, Q . How many Freeborn turbines are less than the 1,525 feet where Bent Tree exceedences were found? What more notice of potential for significant environmental effects could be needed?.

And what of setbacks in the permit? Xcel notes that the original Freeborn Wind permit states:

Wind turbine towers shall not be located closer than 1,000 feet from all residences or the distance required to comply with the noise standards pursuant to Minn. R. 7030.0040, established by the Minnesota Pollution Control Agency, whichever is greater.

Exhibit B, Order Granting Permit and Permit, Section 4.2, December 19, 2018 (note “all residences” without participant or non-participant distinction). When asked in the Freeborn Wind contested case hearing about use and origin of the 1,000 foot setback, there was no definitive response from Commerce-EERA’s drafter of the permit:

³ Note Minnesota’s noise standard does not distinguish between participants and non-participants. The noise limit is 50 dB(A), whether a receptor is a participant or not.

Q: ... it lists 1,000 feet as a setback from residences. Where does that number come from? It's for the SDP template. Where do you get that number?

A: For the template or for what we've submitted for the preliminary?

Q: Both, really. But where do you get – where does the thousand foot come from?

A: Thousand foot. I don't know exact – the exact location of where that comes from. But in the most recent site permit applications that have been approved in the most recent site permits that have been issued by the Commission, that has been the standard distance that they've approved, along with the consideration of noise standards being met.

Tr. Freeborn Wind hearing, Davis, Vol. 2, p. 171-173. The origin of the commonly used 1,000 foot setback, as found in Section 4.2 of the Freeborn Wind draft Site Permit, is unknown. It is not based in statute, rule, or standards, and is arbitrary.

Based on use of the inappropriate ground factor of 0.5 for modeling, there is potential for noise exceedences and non-compliance with Minnesota's noise standards. Based on failure to demonstrate compliance in the contested case with smaller turbines, there is potential for noise exceedences and non-compliance with Minnesota's noise standards. Based on a comparison of the 1,000 foot setback of unknown origin established for Freeborn Wind project using Vestas V110 and V120 turbines compared with the Bent Tree Vestas V82, there is potential for noise exceedences and non-compliance with Minnesota's noise standard. Based upon the exceedences found in Bent Tree with these smaller Vestas V82 turbines at 1150 and 1525 feet, there is potential for noise exceedences and non-compliance with Minnesota noise standards.

SHADOW FLICKER: Xcel's new shadow flicker modeling shows that homes are predicted to receive more than 30 hours annually of shadow flicker:

The Shadow Flicker Assessment has been updated to incorporate the larger Vestas V120 turbine technology and the 2019 Project Layout. The updated assessment indicates that under the realistic modeling scenario the participating residents with the highest shadow flicker would experience 42 hours and 31 minutes per year, and the non-participating residents with the highest shadow flicker would experience 41 hours and 57 minutes per year. Six residences, three participating and three nonparticipating, are anticipated to experience greater than 30 hours of

shadow flicker per year. The Permittee also noted that this analysis does not include any shadow flicker blockage caused by trees, building, or specific building designs.

Exhibit O, Commerce-EERA Comments, November 12, 2019.

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.

Exhibit B, Order Granting Permit and Permit, Permit Section 7.2, Shadow Flicker (December 19, 2019). Commenters in the record have tallied potential for shadow flicker much higher than those hours admitted by Xcel. Kathy Nelson found Xcel's Shadow Flicker modeling predicts 7,416 hours annually as the "worst case" and "adjusts" that figure to 1,195 hours annually with no explanation of the decrease Exhibit S, Nelson Comment (11-12-2019).

Although the original Permit does set a 30 hour annual threshold for shadow flicker, there are no statutes, rules, or standards establishing this limit – it is arbitrary. The ALJ's Recommendation had proposed a 27 hour limit on shadow flicker, also arbitrary. Exhibit C, p. 18-21; Findings #260-261, p. 9-10; FoF #546, p. 17-18; Permit Section 7.2,p. 14-15.

Based on the shadow flicker modeling provided by Xcel in its new Permit Amendment Application and admissions of impacts, and Commerce-EERA admission of impacts, there is documented potential for significant impacts.

DECOMMISSIONING PLAN: Decommissioning is an important aspect of environmental effects and environmental preservation. Decommissioning a 21,313 acre wind project is a large operation and involves not only removing project turbines, but large removing all or part of concrete foundations, project access roads and changes to county and township roads, energy collector system and substation, and other considerations, including paying for it. In decommissioning such a large project, there is inherently potential for significant environmental effects. There is also a necessity to establish financial assurance for funding to decommission properly, in the least impactful manner. This should occur before the project is built.

Proactive planning is not how wind project permitting has been allowed to proceed in Minnesota. Decommissioning information is required to be included in an application, and yet this information was not included in the original Invenenergy application, nor was any decommissioning information included in Invenenergy's response to AFCL discovery requests regarding decommissioning nor were details provided in testimony in the contested case. Minn. R. 7854.0500, Sub. 13. A decommissioning plan was not provided by Invenenergy, and was not provided by Xcel until it filed for a site permit amendment. See Exhibit D, Xcel Site Permit Amendment Application, Attachment J Decommissioning (August 20, 2019). Decommissioning information has not been subject to public vetting, environmental review, and was not part of the Freeborn contested case hearing, other than discussing that the Decommissioning Plan was not provided in the application or elsewhere. Minn. R. 7854.0500, Subp. 13.

Decommissioning financial assurance is also important because in the project leases, there is a clause which would transfer responsibility for decommissioning to the landowner if the project owner does not decommission the project, thus leaving the landowner to decommission

and then to attempt to collect costs from the project owner. When asked about this after its Permit Amendment application, 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 T, 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 U, AFCL IR 10.

The decommissioning plan must be reviewed for adequacy due to the potential for significant environmental effects and transfer of responsibility for decommissioning to landowners. Decommissioning, and whether it is planned for and adequately executed, is a matter of substantial environmental impact.

OTHER PERMIT AMENDMENT AREAS WITH POTENTIAL FOR ENVIRONMENTAL IMPACTS: In addition to noise, shadow flicker, and decommissioning, the other Permit sections proposed for amendment have environmental impacts.

- Section 2.0 Project Description – change in turbines with increased generation economic and environmental impact;
- Section 3.0 Designated Site and map of new project layout with unclear setbacks, visual changes and potential for property valuation and marketability impacts;
- Section 3.1 Turbine Layout, as above, map of new project layout with unclear setbacks, visual changes and potential for property valuation and marketability impacts;
- Section 4.1 Wind Access Buffer, unclear setbacks with apparent encroachment over land not part of the project, visual changes and potential for property valuation and marketability impacts;
- Section 4.2 Residences, with unclear setbacks and potential for noise, shadow flicker, aesthetic and visual impacts;

- Section 4.9 Wind Turbine Towers, larger, noisier, in addition to above impacts on residents, potential impacts on wildlife, birds and bats, many nesting and foraging eagles in area;
- Section 5.2.26 Tower Identification, increased generation likely alters economic cost/benefit, different blades alters cost and noise impacts;
- Section 5.4 Electrical Collector and Feeder Lines, different turbine locations alters impacts;
- Section 7.5.1 Avian and Bat Protection Plan, as above, change in turbines changes potential impacts, new ABPP requires review for adequacy; and
- Section 10.3 Site Plan, as above, changed site plan has changed impacts.

As of this writing, there has been no environmental review via an Environmental Assessment Worksheet or Environmental Impact Statement. The Public Utilities Commission again erroneously determined that environmental review was not necessary at its December 19, 2019 meeting. MEPA requires environmental review for projects with potential for significant impacts. The Freeborn Wind has potential for significant environmental impacts.

E. Material evidence indicating that, because of the nature or location of the proposed project, there maybe potential for significant environmental effects.

The Exhibits A-W cited above as material evidence are attached to this Petition below, with Certification. Exhibits cited below regarding the necessity of environmental review of wind projects are also attached below, and signed Petitions follow.

III. THE PROJECT IS NOT EXEMPT FROM ENVIRONMENTAL REVIEW

The Freeborn Wind project is not exempt from environmental review, and the Environmental Quality Board has jurisdiction over this matter because the Public Utilities Commission has failed to promulgate rules governing environmental review requirements for wind projects.

Despite a 1995 legislative mandate to develop rules for wind siting to include the impact of LWECs on humans and the environment and requirements for environmental review of the

LWECS, there has since that time been a decades' long failure by both the Environmental Quality Board and the Public Utilities Commission to promulgate wind-specific siting rules, and despite multiple Petitions for Rulemaking to promulgate wind-specific siting and noise rules, there is no existing case law regarding environmental review of LWECS as this issue has yet to be brought to the courts. Minn. Stat. §216F.05. Now would be a good time to correct this environmental review deficiency.

As an electric generating facility over 50 MW, a mandatory EAW and/or EIS is required. Minn. R. 4410.4300 and Minn. R. 4100.4400. Wind is exempted from some, but not all of the provisions of the Power Plant Siting Act, and many statutory provisions of the PPSA are expressly applicable:

The requirements of chapter 216E do not apply to the siting of LWECS, except for sections [216E.01](#); [216E.03, subdivision 7](#); [216E.08](#); [216E.11](#); [216E.12](#); [216E.14](#); [216E.15](#); [216E.17](#); and [216E.18, subdivision 3](#), which do apply.

Minn. Stat. §216F.02.

There are exemptions from environmental review, but this wind project is not exempt from environmental review under any of the various exemptions listed in Minnesota rules. Minn. R. 4410.4500. As of this writing, all required permits have not yet been granted, another reason, as a matter of timing, that this project is not exempt from environmental review. Minn. R. 4410.4600, Subp. 2(B). See Exhibit H, Invenergy Application, p. 111-113 (20176-132804-01) (Applicant's list of permits needed from various sources). The Public Utilities Commission's written Order regarding Xcel's Site Permit Amendment Request has not yet been issued. No permits have been granted by the townships, which by ordinance and state rule requires that oversize and overweight truck permitting must include environmental review. Exhibit N, London Township Ordinance 17-1, p. 5-6, Section 3. Other permits are also pending.

Most importantly, this project is not exempt under Minn. R. 7854.0500, Subp. 7, as this rule does not comport with MEPA environmental requirements and does not fulfill the legislative mandate to promulgate rules setting requirements for environmental review of wind projects.

The history of wind siting and failure of the Environmental Quality Board and now the Public Utilities Commission is decades long. Again, in 1995, the legislature mandated that rules be developed for siting wind covering specific environmental considerations, specifically:

The commission shall adopt rules governing the consideration of an application for a site permit for an LWECS that address the following:

(1) criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment;

...

(4) requirements for environmental review of the LWECS; ...

Session Laws 1995, Ch. 203, Section 5⁴ Siting authority was originally held by the Environmental Quality Board, and was transferred from the EQB to the Public Utilities Commission in 2005. This rulemaking mandate was retained in statute and moved to the Public Utilities Commission's wind statutory chapter. Minn. Stat. §216F.05; see Session Laws 2005, Ch. 97, Article III, Sections 17, 19⁵.

Rules mandated by the legislature were not promulgated until 2001, and those rules developed did not include either “criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment” or “requirements for environmental review of the LWECS.” Minn. Stat. §216F.05(1),(4). Instead, the “rules” avoided environmental review with a simple, conclusory, and utterly unsubstantiated section in the Statement of Need and Reasonableness. From the SONAR:

Because the environmental and human consequences of wind turbines are relatively minor and can be minimized by appropriate permit conditions, the EQB

⁴ Online: <https://www.revisor.mn.gov/laws/1995/0/203/>

⁵ Online: <https://www.revisor.mn.gov/laws/2005/0/97/>

is not requiring in these rules that an Environmental Assessment Worksheet or an Environmental Impact Statement be prepared on a proposed LWECS. It is sufficient that the environmental impacts and mitigative measures be discussed in the application itself. If an issue of concern were to be raised specific to a particular wind project, the EQB could ask for additional examination of those impacts and could address the concern through permit conditions or by moving some of the turbines.

Exhibit V, SONAR Minn. R. 4401, p. 19 (September 20, 2001)(highlighting added). On that same page of the SONAR, there's a reference to setback requirements, and siting in wetlands, but there are no setback requirements or wetland siting restrictions in statute or rule applicable to Large Wind Energy Conversion Systems. The SONAR's "analysis" of environmental impact impacts fails to set out any requirements for environmental review:

Subpart 7. Environmental impacts. Of course, the EQB must investigate and review the environmental impacts associated with any proposed wind project. The applicant is the one that must provide the information about the potential impacts of the project. What this rule requires is the inclusion in the application of information on the potential impacts of the project, the mitigative measures that are possible, and adverse environmental effects that cannot be avoided. This is the typical analysis with any project undergoing environmental review by the EQB or other agencies.

The effects identified in items A – R in the rule should cover every potential impact of a LWECS. It is not necessary to discuss every single one of these in this Statement of Need and Reasonableness. Suffice it to say that an applicant must identify any and all potentially adverse impacts that may be caused by a proposed project and mitigative measures that might be implemented with regard to those impacts.

Wind projects have not been found to have significant environmental and human impacts. Wind projects along Buffalo Ridge have been generally well accepted by residents and others concerned about the environment. Permit conditions have been satisfactory to address specific concerns like wetlands and wildlife management areas with past permits. One area of concern that was raised initially was the possibility of avian fatalities caused by the turbines.

As part of the first wind permit issued by the EQB, the Board required Northern States Power Company to conduct an avian mortality study along Buffalo Ridge. This study was conducted between 1995 and 2000, and a report on the study was completed in 2000.

The researchers found that the number of avian fatalities from the wind turbines at Buffalo Ridge is essentially inconsequential, although there was some bat mortality found. The wind developers are presently conducting additional studies on bat mortality.

Because the environmental and human consequences of wind turbines are relatively minor and can be minimized by appropriate permit conditions, the EQB is not requiring in these rules that an Environmental Assessment Worksheet or an Environmental Impact Statement be prepared on a proposed LWECS. **It is sufficient that the environmental impacts and mitigative measures be discussed in the application itself.** If an issue of concern were to be raised specific to a particular wind project, the EQB could ask for additional examination of those impacts and could address the concern through permit conditions or by moving some of the turbines.

Id. SONAR, p 19-20 (emphasis added).

The resulting “rule” stated:

Subp. 7. Environmental impacts.

An applicant for a site permit shall include with the application an analysis of the potential impacts of the project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas:

- A. demographics, including people, homes, and businesses;
- B. noise;
- C. visual impacts;
- D. public services and infrastructure;
- E. cultural and archaeological impacts;
- F. recreational resources;
- G. public health and safety, including air traffic, electromagnetic fields, and security and traffic;
- H. hazardous materials;
- I. land-based economics, including agriculture, forestry, and mining;
- J. tourism and community benefits;
- K. topography;
- L. soils;
- M. geologic and groundwater resources;
- N. surface water and floodplain resources;
- O. wetlands;
- P. vegetation;
- Q. wildlife; and
- R. rare and unique natural resources.

The analysis of the environmental impacts required by this subpart satisfies the environmental review requirements of chapter 4410, parts [7849.1000](#) to [7849.2100](#), and Minnesota Statutes, chapter 116D. No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.

Minn. R. 7854.0500, Subp. 7 (emphasis added).

Looking back at the SONAR, the resulting “rule,” and the repeated references in the Freeborn Order to setback requirements, noise and residential setbacks, siting in wetlands, again, there are no setback requirements or wetland siting restrictions in statute or rule applicable to Large Wind Energy Conversion Systems. However, there are Small Wind Siting Standards, expressly drafted for small wind projects under 25MW. Exhibit A, Order Establishing Small Wind Permit Standards, PUC Docket E,G-000/M-07-1102. “Small wind energy conversion system” or “SWECS” means any combination of WECS with a combined nameplate capacity of less than 5,000 kilowatts.” Minn. Stat. §216F.01, Subd. 3. The small wind standards set out in the Commission’s 2008 small wind standards order, particularly those in the chart found in Attachment A of the Order, are extensively cited in LWECS proceedings as the basis for setbacks and buffers in LWECS permits! See Attachment D, Xcel Energy Petition for Permit Amendment, p. ; ALJ Freeborn Wind Recommendation; Attachment B, Commission’s Freeborn Wind Order 12/19/2018. The Freeborn Site Permit includes establishment of setbacks, including setbacks as wind buffers, setbacks from residences, setbacks from roads, and 3 rotor diameter x 5 rotor diameter setbacks, but there is no basis for use of these setbacks in statute or rule or standards – they are arbitrarily based on the inapplicable small wind standards. Xcel’s Site Permit Amendment Application includes many references to setbacks, but there are no citations to statutory or rule criteria, only the “permit.” Search Ex. D for references to Permit Sections 4.1, 4.2, 4.3 in Attachment A, Xcel Petition for Permit Amendment, and maps constituting Attachments. See Exhibit B, PUC Order Granting Permit and Permit; Exhibit C, ALJ Findings of Fact, Conclusions of Law, and Recommendation. Xcel’s Application Attachment C shows 3x5 rotor diameter and greyed in “setbacks” and the 3x5 RD red markings overlap grey areas that are supposedly off limits due to “setbacks.” See Exhibit D, Application, Attachment C map.

Petitions have been filed for wind-specific siting rules, and have been rejected by the Commission. See PUC Docket E-999/R-18-518, GWT Rulemaking Petition, denied September 26, 2018. A petition was filed with the MPCA requesting wind-specific noise rules be developed, also rejected. The rejection letter was entered in the Freeborn Wind docket. Exhibit W, Stine Letter, September 12, 2016.

Association of Freeborn County Landowners intervened in the Freeborn Wind docket before the Commission, and participated as a full party in the Freeborn Wind contested case hearing through Office of Administrative Hearings. Multiple material issues of fact, multiple examples of potential for significant environmental effects, and multiple requests for environmental review were raised by AFCL, local government, and members of the public. The Commission's initial Freeborn Order acknowledges potential impacts of noise, public safety and ice throws, shadow flicker, interference with over-the-air television signals, and decommissioning. Exhibit B, Order Granting Site Permit and Permit, p. 7, December 19, 2018.

It is not the job of an intervening party or member of the public to assure compliance with the Minnesota Environmental Policy Act, Power Plant Siting Act, application content or other requirements – parties do not have and should not be forced to take on the applicants' burden of production or burden of proof, and parties should not have to retain and present expert witnesses to do the work of an agency.

The Public Utilities Commission, with the help of Commerce-EERA, has the mandate to regulate and to “site LWECs in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.” Minn. Stat. §216F.03. A mandatory EAW and EIS is required for an electric facility over 50 MW. Minn. R. 4410.4300 and Minn. R. 4100.4400. Minn. Stat §216F.05(4) mandated adoption of rules for Large Wind

Energy Conversion Systems (LWECS) but no wind-specific siting rules have been adopted.

AFCL has repeatedly raised material issues of fact, material evidence of potential for significant environmental effects, demonstrating that the nature and location of the proposed project has potential for significant environmental effects. With this Petition, AFCL again raises these issues and requests environmental review as required by the Minnesota Environmental Policy Act. AFCL asks the Environmental Quality Board and the Public Utilities Commission to follow the law.

The Public Utilities Commission has deflected, dismissed, and denied AFCL's multiple requests for environmental review, most recently, AFCL's request for an Environmental Impact Statement on December 19, 2019. Association of Freeborn County Landowners respectfully requests that the Environmental Quality Board refer this Petition to the Public Utilities Commission, that an Environmental Assessment Worksheet be prepared for the Freeborn Wind project, and that an Environmental Impact Statement be prepared as necessary environmental review.

Respectfully submitted,

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