



**Minnesota Center for
Environmental Advocacy**

February 3, 2020

Ryan Barlow
Acting Executive Secretary, General Counsel
Minnesota Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

Via eDockets

RE: Application of Freeborn Wind Energy, LLC
PUC Docket: IP-6946/WS-17-410
OAH Docket: 80-2500-34633

Dear Mr. Barlow,

Minnesota Center for Environmental Advocacy (“MCEA”) and Fresh Energy submit this letter in response to the Association of Freeborn County Landowners’ (“AFCL”) Petition for an Environmental Assessment Worksheet (“EAW”) for the Freeborn Wind, LLC Project, submitted on January 1, 2020. MCEA and Fresh Energy disagree with the arguments presented by AFCL regarding the need for an EAW for the project. The Public Utilities Commission’s (the “Commission”) review and analysis of the potential environmental impacts of the project satisfied Minn. Rule 7854.0500, a rule approved by the Environmental Quality Board (“EQB”) as an alternative environmental review as authorized by Minn. Stat. § 116D.04, subd. 4a.

On June 15, 2017, pursuant to Minn. R. 7854.0400, Freeborn Wind Energy, LLC submitted an application for a Site Permit for an up to 84 megawatt Large Wind Energy Conversion System (LWECS). The application included a description of the potential environmental impacts of the project, as required by Minn. R. 7854.0500, subp. 7. On September 20, 2018, the Commission met to review the application and the Administrative Law Judge’s recommendation. The Commission noted that in reviewing an LWECS Site Permit application, it reviews the information submitted pursuant to Minn. R. 7854.0500, subp. 7 and it considers “...adverse direct and indirect environmental effects [of the project] that cannot be avoided...” pursuant to Minn. Stat. § 216E.03, subd. 7.

This review and consideration of the project’s potential environmental impacts and mitigative measures under Minn. R. 7850.0500, subp. 7 is required by law and is consistent with MEPA. *See Minnesota Ctr. for Env’tl. Advocacy v. Minnesota Pub. Utilities Comm’n, No. A10-812, 2010 WL 5071389, at *4 (Minn. App. Dec. 14, 2010) (Compliance with duly adopted alternate environmental review process satisfies the Commission’s environmental review responsibilities under MEPA.)*

Using the law and science to defend Minnesota’s environment.

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The predecessor rule to Minn. R. 7850.0500 was proposed and adopted by the Environmental Quality Board in 2002. That rule, then numbered 4401.0450, required a substantially similar alternative environmental review procedure and similarly exempted LWECS from the requirement to complete an EAW or EIS. After the 2005 transfer of environmental review obligations for energy facilities from the EQB to the Department of Commerce, the rule section was renumbered as 7850. The specific rule, 7850.0500, subp. 7, states that “[t]he 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.”

The AFCL’s Petition cites the recent decision in *Matter of Minnesota Power’s Petition for Approval of EnergyForward Res. Package*, 2019 WL 7042812 (Minn. App. Dec. 23, 2019) (*NTEC*) in support of its argument for an EAW. The *NTEC* case does not support AFCL’s contention that MEPA requires the Commission to go beyond the process and analysis required by Minn. R. 7850.0500, subp. 7. The *NTEC* court held that the Commission must conduct environmental review prior to its decisions, but does not address the issue of alternative forms of environmental review approved by the EQB under Minn. Stat. § 116D.04, subd. 4a.

MCEA and Fresh Energy appreciate the opportunity to comment on this request.

Sincerely,

/s/Evan Mulholland

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cc: eDockets eService recipients