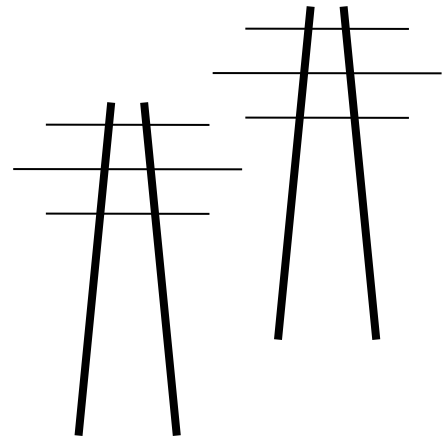


Legalelectric, Inc.

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



March 20, 2020

Will Seuffert
Executive Secretary
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, Mn 55101

via eDockets to all parties

RE: Appeal of PUC decision on AFCL Petition for EAW
Appellate Court File: A20-0410
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. Seuffert:

Attached for filing in eDockets please find AFCL's Appeal of the Public Utilities Commission's decision denying AFCL's Petition for Environmental Assessment Worksheet. This was filed on March 18, 2020, and sent by Certified Mail on March 19, 2020 to all parties. A courtesy copy has been provided to the Environmental Quality Board's Environmental Review Program Director.

As of this date, the Commission has failed to file an Order and Record of Decision in this matter. AFCL's pleadings will be amended when there is a substantive decision to review.

Very truly yours

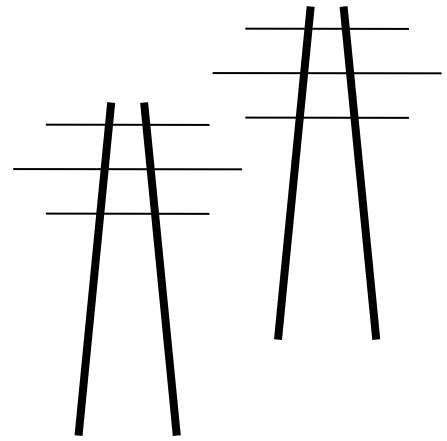
Carol A. Overland
Attorney at Law

cc: All parties via eDockets
Association of Freeborn County Landowners

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



EXPIDITED HANDLING REQUESTED

March 18, 2020

Clerk of Appellate Court
Minnesota Court of Appeals
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Filed via EMACS

RE: Appeal of Public Utilities Commission Denial of AFCL's EAW Petition
**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: IP-6946/WS-17-410

Dear Clerk of Appellate Court:

Enclosed for filing on behalf of Relator Association of Freeborn County Landowners (AFCL), please find appeal of Public Utilities Commission denial of AFCL's Petition for EAW under MEPA, Minn. Stat. §116D.04, Subd. 10, and filing fee of \$550.00.

- Petition for Writ of Certiorari
- Proposed Writ of Certiorari (WORD)
- Statement of the Case
- Addendum to Petition for Writ of Certiorari
 - Attachment A – EQB Monitor February 18, 2020
 - Attachment B – PUC Letter to EQB February 13, 2020
 - Attachment C – AFCL Letter to EQB February 28, 2020
 - Attachment D – AFCL Petition for EAW – Cover and Petition (Signature pages and Exhibits in EQB and PUC record)
 - Attachment E – PUC Staff Briefing Papers for February 6, 2020 Agenda Meeting

Attachment F – AFCL Letter to PUC re: False Statements in Staff Briefing
Papers

We request expedited handling of this filing.

The Affidavit of Service via Certified Mail of the Writ and documents above will be provided separately upon receipt of Writ and subsequent mailing.

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

Very truly yours

A handwritten signature in cursive script, reading "Carol A. Overland".

Carol A. Overland
Attorney at Law

cc: Association of Freeborn County Landowners

STATE OF MINNESOTA
IN COURT OF APPEALS

A20-0410

**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**

**CERTIFICATE OF SERVICE BY
STANDARD U.S. MAIL**

PUC Docket No. IP6946/WS-17-410

Association of Freeborn County
Landowners,
Relator,

DATE TRIGGERING APPEAL:
February 18, 2020
Publication of Notice of Decision in
EQB Monitor

vs.

Minnesota Public Utilities Commission,
Respondent.

I, Carol A. Overland, hereby certify that on the 19th day of March, 2020 I filed with the Court and served the Cover, Affidavit of Service, Writ, Statement of the Case, and Addendum by Certified U.S. Mail to the following parties on the service list, attached, postage prepaid.

March 19, 2020



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Attorney at Law
LEGALECTRIC
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(612) 227-8638
overland@legalelectric.org

**ATTORNEY FOR PETITIONER
ASSOCIATION OF FREEBORN COUNTY
LANDOWNERS**

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Attorney for Commerce – EERA

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Project Owner Permittee and Former Owner Permittee (courtesy copy):

Christina Brusven
Lisa Agrimonti
Counsel for Xcel Energy/formerly counsel for Invenergy
Fredrickson & Byron
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Minneapolis, MN 55402-1425
cbrusven@fredlaw.com

Other Party:

Richard J. Savelkoul, Counsel for KAAL
Martin & Squires
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St. Paul, MN 55101
rsavelkoul@martinsquires.com

FILED

March 19, 2020

**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN COURT OF APPEALS**

**WRIT OF CERTIORARI
(proposed)**

CASE TITLE:

**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**

Court of Appeals Case No. A20-0410

PUC Docket No. IP6946/WS-17-410

**Association of Freeborn County Landowners,
Relators,**

vs.

Minnesota Public Utilities Commission,

Respondent.

**Publication in EQB Monitor
Notice of Decision Denying
Petition for EAW:
February 18, 2020**

TO: PUBLIC UTILITIES COMMISSION:

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with Rule 115.04, subdivision 3, within 30 days after service of the Petition or 14 days after delivery of a transcript, whichever is later, an itemized statement of the record, exhibits, and proceedings in the above-entitled matter so that this court may review the decision of the Minnesota Public Utilities Commission and Notice issued on the date noted above.

You are further directed to retain the actual record, exhibits, and transcript of proceedings until requested by the clerk of appellate courts to deliver them in accordance with rule 115.04, subdivision 5.

Pursuant to the requirements of the Minnesota Environmental Policy Act, Minn. Stat. §116D.04, Subd. 10, and Minnesota Administrative Procedure Act, Minn. Stat. §14.63-14.68, copies of this writ and accompanying petition shall be served forthwith either personally or by certified mail upon the Minnesota Public Utilities Commission, upon the Attorney General of the State of Minnesota, upon the project permittee, Freeborn Wind, LLC/Xcel Energy, and upon all parties to the proceeding in which the order sought to be reviewed was made, and the Environmental Quality Board:

MINNESOTA PUBLIC UTILITIES COMMISSION:

Will Seuffert, Executive Secretary
Ryan Barlow, General Counsel
Minnesota Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101-2147

Ian Dobson
PUC Asst. Attorney General
1100 Bremer Tower
445 Minnesota St.
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MINNESOTA ATTORNEY GENERAL

Keith Ellison, Attorney General
Office of the Minnesota Attorney General
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COMMERCE EERA

Linda S. Jensen
Asst. Attorney General
445 Minnesota St., Suite 1800
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PROJECT OWNER:

Christina Brusven
Counsel for Freeborn Wind LLC/Xcel Energy, former Counsel for Invenergy
Fredrickson & Byron
200 S. 6th St., Suite 4000
Minneapolis, MN 55402-1425

KAAL-TV

Richard J. Savelkoul, Counsel for KAAL
Martin & Squires
332 Minnesota St., Suite W2750
St. Paul, MN 55101

Copies of this writ and accompanying petition shall be served forthwith either personally or by certified mail upon the respondent Minnesota Public Utilities Commission, its counsel listed, and upon the official parties in the above-captioned case.

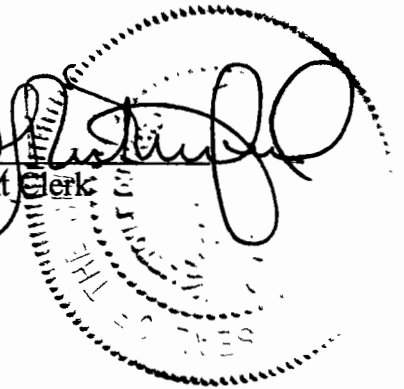
Proof of service of the writ and itemized statement shall be filed with the Clerk of the Appellate Courts.

DATED: *March 19, 2020*

Clerk of Appellate Courts

By:

[Handwritten Signature]
Assistant Clerk

A circular embossed stamp of the Minnesota Appellate Courts is located to the right of the signature. The text "THE MINNESOTA APPELLATE COURTS" is arranged in a circle around the center.

(Clerk's File Stamp)

STATE OF MINNESOTA
IN COURT OF APPEALS



CASE TITLE:

**STATEMENT OF THE CASE
OF PETITIONER/RELATOR**

**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**

Court of Appeals Case No. _____

Association of Freeborn County
Landowners,

Minnesota Public Utilities Commission
Docket No. IP6946/WS-17-410

Relator,

**Dates of Decision:
FINAL ORDER, DECISION AND
RECORD OF DECISION NOT YET
ISSUED**

vs.

**Date Triggering Appeal:
PUBLICATION IN EQB MONITOR**
Notice of Decision: February 18, 2020

Minnesota Public Utilities Commission,

Respondent.

Relator Association of Freeborn County Landowners, for its Statement of
the Case, states as follows:

1. Agency of case origination:

This case originated with the Minnesota Public Utilities Commission (hereinafter

“PUC.”), after referral by the Environmental Quality Board (“EQB”), after verification, of Association of Freeborn County Landowners’ Petition for Environmental Assessment Worksheet.

2. Jurisdictional statement

a. Statute, Rule, or Other Authority Authorizing Certiorari Appeal.

Certiorari appeal of Public Utilities Commission decisions regarding Petitions for Environmental Assessment Worksheets are taken pursuant to Minn. Stat. §116D.04, Subd. 10. The Administrative Procedures Act authorizes review in the Court of Appeals by writ of certiorari. Minn. Stat. §14.63. Appeals of Public Utilities Commission decisions generally may be made in accordance with Minn. Stat. §216B.52, however, no Final Order or Record of Decision has yet to be issued by the Commission.

b. Authority Fixing Time Limit for Obtaining Certiorari Review.

The Minnesota Environmental Policy Act fixes the time limit for obtaining Certiorari Review at 30 days after Notice of the decision regarding an EAW Petition is published in the EQB Monitor. Minn. Stat. §116D.04, Subd. 10.

Relators appeal the PUC’s decision denying Association of Freeborn County Landowners’ Petition for EAW. This appeal is timely filed no more than 30 days after the Notice of Decision is published in the EQB Monitor, which occurred on February 18, 2020. The Public Utilities Commission made its decision on February 6, 2020, and failed to file a Final Order and Record of Decision with findings of fact with the notice of decision sent February 13, 2020 to the EQB or in the Commission’s eDockets

electronic filing system. Notice of denial of the Petition was published in the EQB Monitor on February 18, 2020. The Public Utilities Commission has yet to file a written Final Order or Record of Decision as of this date.

The publication of notice in the EQB Monitor on February 18, 2020 triggers the 30 day window of opportunity to appeal the PUC's decision denying AFCL's EAW Petition. Addendum Attachment A, EQB Monitor; Attachment B, PUC Letter to EQB.

c. Finality of Order or Judgment.

This Public Utilities Commission is not legally final as the Commission has yet to issue a written Final Order reflecting its decision a month and a half ago, but the 30 day time limit for appeal, triggered by publication in the EQB Monitor, is fixed by the Minnesota Environmental Policy Act. Minn. Stat. §116D.04, Subd. 10. The Commission may issue its Final Order and Record of Decision denying the EAW Petition, and at that time, Association of Freeborn Landowners will amend its pleadings.

3. State type of litigation and designate any statutes at issue.

This is an appeal of a Minnesota Public Utilities Commission action, a state agency denial of AFCL's Petition for an Environmental Assessment Worksheet for a Large Wind Energy Conversion System (LWECS). Minn. Stat. §116D.04, Subd. 10. The Public Utilities Commission is attempting to permit the Freeborn Wind project without environmental review as required by MEPA. Minn. Stat. §116D.04, Subd. 2(a)a, e. See Addendum, Attachment A, EQB Monitor; Attachment B, PUC Notice to EQB. Compliance with Minn. R.7854.0500, Subd. 7, application content requirements, is not

“alternative review” and is no substitute for environmental review. See Minn. Stat. §116D.04, Subd. 4a.

The Commission’s compliance with Minn. Stat. §216F.05, mandating promulgation of rules regarding environmental review is at issue, as there are no rules addressing “criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment;” and “requirements for environmental review of the LWECS.” Id.

Also at issue is the Commission’s failure to comply with its mandate of broad spectrum of participation. Minn. Stat. §216E.08, Subd. 2, by refusing to provide for public hearing or a contested case hearing, as requested by AFCL and members of the public, to review and comment on Xcel Energy’s voluminous permit amendment filings.

4. Brief description of claims, defenses, issues litigated, and result below.

The Commission’s denial of AFCL’s Petition for an Environmental Assessment Worksheet for a Large Wind Energy Conversion System (LWECS) is at issue, where material evidence was produced demonstrating potential impacts to the environment and to humans. Minn. Stat. §116D.04, Subd. 10. The Commission orally denied the decision, but a Commission order is not “final” until the written order is filed, and EQB rules require a Record of Decision. See Addendum, Attachment G, EQB Letter of Transmittal to PUC; see also Attachment A, EQB Monitor; Attachment B, PUC Letter to EQB; Attachment C, AFCL Letter to EQB.

The Commission’s failure to develop siting criteria and rules for environmental review is at issue because of the potential for environmental impact of large wind projects

covering thousands of acres and moving into an existing community. The legislature mandated promulgation of rules, specifically “criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment;” and “requirements for environmental review of the LWECS,” however no siting criteria or requirements for environmental review have been adopted. Minn. Stat. §216F.05(1), (4). In the rulemaking SONAR, potential for impacts was dismissed out of hand and no “criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment;” and “requirements for environmental review of the LWECS” were developed. Addendum, Attachment D, Petition for EAW. Despite the specific mandate, wind projects were directed to produce environmental information in the project application content, and in the SONAR, that was deemed sufficient environmental analysis. Minn. R. 7854.0500, Subp. 7, see Addendum, Attachment D, Petition for EAW, p. 22-25.

Rulemaking Petitions have been filed, and rejected by the Public Utilities Commission and the Pollution Control Agency. See Attachment D, Petition for EAW, p. 25; PUC Docket R-18-518; AFCL Ex. W, Petition for EAW, Stine Letter, September 12, 2016 (Freeborn docket WS-17-410). There has never been an Environmental Assessment Worksheet or an Environmental Impact Statement for a LWECS. This violates the intent and letter of the Minnesota Environmental Policy Act. Minn. Stat. ch. 116D.

Environmental review is required where a validated petition “demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects.” Minn. Stat. §116D.04, Subd. 2a(e). AFCL’s EAW

Petition was deemed sufficient by the EQB and was transmitted to the Public Utilities Commission for a determination. Material evidence accompanying the EAW Petition included an initial noise study; the May 14, 2018 ALJ Recommendation of denial because applicants had not demonstrated compliance with Minnesota's noise standard; an application to amend the permit, including larger and noisier turbines, which has not been subjected to contested case review or even a public hearing and denial of AFCL Motion; subsequent noise study provided after the initial permit was granted and which have not been vetted in a contested case and which utilize inappropriate ground factor assumption of 0.5 for an elevated source; rejection of rulemaking petition regarding noise standards; shadow flicker studies that show high levels of exposure to shadow flicker for many landowners; the December 19, 2019 Order showing Commission willingness to grant amended permit without contested case or public hearing and public vetting of changes proposed by applicant; the Bent Tree Noise Monitoring Study Phase II showing violations of state noise standards; arbitrary, inadequate and unsupported setbacks built into site permit template; the siting of wind project without siting criteria despite legislative mandate to develop rules for requirements of environmental review; and improper siting of large wind energy conversion projects (LWECS) using small wind siting standards for projects 25 MW or less. See Addendum, Attachment D, EAW Petition, and see full EAW Petition (record).

Public participation has been constrained through the Commissions refusal to perform iterative environmental review, either through an EAW with its public comment period and determination of the need for an EIS, and in its refusal to perform an

Environmental Impact Statement, with release of a Draft EIS, a public hearing and comment period, and a Final EIS and an adequacy determination. Public Participation is to be a broad spectrum of participation, as required by Minn. Stat. §216E.08.

The Commission's use of siting standards developed for small (under 25MW) is also an error of law, as well as use of setbacks that are unsupported and have no basis in law or fact. Use of improper siting standards specifically for small wind project to site LWECS ignores the potential for significant environmental harm.

The Commission is on actual and constructive notice that wind noise is an impact, and that the setbacks of Bent Tree wind project of 1,150 and 1,525 feet were not sufficient to protect residents from noise exceedences. Minn. R. 7830.0400; see also Bent Tree settlements, PUC Docket WS-08-573. The Bent Tree noise study Phase II was entered in the Freeborn Wind record and was also included as material evidence in AFCL's EAW Petition. The ALJ Recommendation in the initial Freeborn Wind contested case recommended the permit be denied because the applicant had not demonstrated compliance with the noise rules. Despite this, the Commission's approved a site permit, Order December 19, 2018, with no noise modeling demonstrating compliance. Now approval is pending of Xcel Energy's amendment of the site permit, with a noise study based on a change of the ground factor modeling assumption from 0.0 to 0.5, a substantive change. There has been no public review and comment, no opportunity to vet this study, and no demonstration that the project can meet Minnesota's noise standards. The study uses 0.5 ground factor, when there is no modeling in the record that utilizes this ground factor of 0.5. The Commission's approval and amendment of the site permit,

the absence of any demonstration prior to approval that Freeborn Wind could comply with state noise standards, unreasonably authorized delay of production of noise studies until after approval of the permit, a flagrant disregard for environmental impacts, and an error of law.

The Commission is also on actual and constructive notice that homes are expected to experience shadow flicker, a substantial impact, and rather than require prudent siting, instead relied on a permit term of “abnormal level of complaints” to trigger monitoring.

The Commission is also on notice that decommissioning plans, and lack thereof, can have a substantial impact. The Commission’s failure to require production of decommissioning information and postponing production of decommissioning planning to post-permit stage without public review. Decommissioning has an environmental impact, and plans should be publicly vetted.

Staff Briefing Papers for the Commission’s February 6, 2020 Agenda meeting where the AFCL EAW Petition was discussed contained false statements regarding sufficiency of the EAW Petition and also contained incorrect statements about the Commission’s jurisdiction and authority to declare a Petition insufficient. Addendum, Attachment E, Staff Briefing Papers; Attachment F, AFCL Letter January 28, 2020. To the extent these false and misleading statements affected the Commission’s decision, the decision is an error of law and is arbitrary and capricious.

5. List specific issues proposed to be raised on appeal.

AFCL is unable to specifically state the issues to be raised on appeal as there is no Record of Decision supporting the decision.

The errors of law and arbitrary and capricious acts likely to be raised include:

- a. Whether failure to perform environmental review and denial of a Petition for EAW presented with material evidence that, because of the nature or location of the proposed project, there may be potential for significant environmental effects, is a violation of MEPA. Minn. Stat. §116D.04, Subd. 10, see also Minn. R. 4410.1100, Subp. 2E.
- b. Whether failure to perform iterative environmental review with public comment and/or hearing is a violation of the Commission's public participation and public interest mandate of Minn. Stat. §216E.08 and the Initial Permit, unamended. See December 19, 2018 Site Permit, FoF 243 and 244 (requiring a hearing and summary report).
- c. Where Commission is on notice of likely non-compliance with Minnesota noise standard, and noise exceedences for the Bent Tree Project, and receives updated "noise study" for Freeborn Wind, and does not open it to public scrutiny and comment.
- d. Whether a Siting Order that relies on "Order Establishing General Wind Permit Standards" (Docket No. E, G-999/M-07-1102) for siting criteria for a Large Wind Energy Conversion System, wind projects greater than 25MW constitutes legal error.
- e. Where all wind noise modeling provided by applicant in the record is based on a 0.0 ground factor assumption, upon which the ALJ Recommended the permit be denied due to failure to demonstrate compliance, is failure to perform environmental review for a site permit with noise study that utilizes a 0.5 ground factor, where there is no modeling provided by applicant with 0.5 ground factor, does this constitute an arbitrary and capricious action, unsupported by the record, and legal error?
- f. Where Commission has actual and constructive notice of environmental issues and potential for substantial impact and has failed to perform environmental review, relieves Applicant of burden of proof and production to demonstrate that it can comply with statutory and regulatory requirements, i.e., noise, shadow

flicker, decommissioning, and delays proof and production until after permit issued, does that constitute legal error.

- g. Where the Commission disregards robust public participation, intervention, and party and public testimony showing that the community does not consent to the project encroaching on the community, is issuance of a site permit arbitrary and capricious and legal error in violation of the Power Plant Siting Act, Minn. Ch. §216F and Minn. R. Ch. 7854, and Minn. R. 7030.0400?

6. Related appeals.

There is a pending appeal, stayed pending the Commission's Final Order regarding Xcel Energy's Amendment Application. See A19-1195, *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*. AFCL requests consolidation of these two appeals, and will request consolidation in a separate filing.

At this time, it is not known whether any other party will intervene. The Environmental Quality Board will be provided with a courtesy copy at the time of service of parties.

As above, the Commission's decision here appealed is likely not "final" because the Commission's EAW Petition Final Order and Record of Decision has not yet been produced. The Commission's procedural failing has put AFCL in the position of appealing a decision without the Findings of Fact and knowledge of the basis for the Commission's denial of the EAW Petition.

AFCL is filing this appeal so as not to miss the statutory window for appeal of the PUC's EAW Decision. Minn. Stat. §116D.04, Subd. 10. AFCL requests stay of

consideration of this appeal of the Commission's EAW Petition decision until after the Commission produces the Final Order and Record of Decision regarding the EAW Petition. AFCL will request a Stay separately with request for an Order to produce the Final Order and Record of Decision.

7. Contents of record.

There is a record of the PUC's proceeding regarding AFCL's Petition for EAW. For the purposes of Rules 115.04, subd. 1 and 110.02, subd. 1(c), Relator provides notice that a separate transcript is not necessary to review the issues on appeal, however, without a Final Order and Record of Decision, a transcript should be prepared of the Commission's February 6, 2020 agenda meeting for this matter. The transcript will be requested, and the record, will be transmitted to the Court of Appeals under Rule 111.01. Trout Unlimited, Inc. v. Minn. Dep't of Agriculture, 528 N.W. 2d 903, 908 (Minn. App. 1995)

(all documents "available and in the possession of" the agency are part of the record.).

8. Is oral argument requested? Yes. At another location? No.

9. Identify the type of brief to be filed. Formal brief under [Rule 128.02](#).

10. Names, addresses, zip codes telephone numbers and emails of attorneys:

Relator - Association of Freeborn County Landowners' Counsel – as below

Attorney for Minnesota Public Utilities Commission:

Will Seuffert, Executive Secretary

Ian Dobson

Ryan Barlow, General Counsel
Minnesota Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101-2147
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Attorney for Commerce – EERA

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Project Owner Permittee and Former Owner Permittee (courtesy copy):

Christina Brusven
Counsel for Invenergy
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Other Party:

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March 18, 2020



Carol A. Overland
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(612) 227-8638
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ATTORNEY FOR ASSOCIATION OF
FREEBORN COUNTY LANDOWNERS

**STATE OF MINNESOTA
IN COURT OF APPEALS**

**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**

Court of Appeals Case No. _____

PUC Docket No. IP6946/WS-17-410

Association of Freeborn County
Landowners,

Dates of Decision:

Relator,

**FINAL ORDER, DECISION
AND RECORD OF DECISION
NOT YET ISSUED**

vs.

Minnesota Public Utilities Commission,

Commission Agenda Meeting:
February 6, 2020

Respondent.

Date Triggering Appeal:

PUBLICATION IN EQB MONITOR:
Notice of Decision: February 18, 2020

Addendum

Attachment A – EQB Monitor February 18, 2020

Attachment B – PUC Letter to EQB February 13, 2020

Attachment C – AFCL Letter to EQB February 28, 2020

Attachment D – AFCL Petition for EAW – Cover and Petition (Signature pages and
Exhibits in EQB and PUC record)

Attachment E – PUC Staff Briefing Papers for February 6, 2020 Agenda Meeting

Attachment F – AFCL Letter to PUC re: False Statements in Staff Briefing Papers

Attachment G - EQB Letter of Transmittal January 3, 2020

Note: PUC has yet to issue Final Order and Record of Decision re: AFCL EAW Petition

Attachment A

EQB Monitor – February 18, 2020

Page 2:

Environmental Assessment Worksheet Need Decisions

The noted responsible governmental unit has made a decision regarding the need for an Environmental Assessment Worksheet in response to a citizen's petition.

- Minnesota Department of Transportation, Shoreham Yards East Side Shipping Container Drop-off (Denied)
 - RGU Contact: Debra Moynihan, 651-366-3618
 - Link to Document: No link provided. Contact the RGU.
- Public Utilities Commission, Freeborn Wind Project (Denied)
 - RGU Contact: Michael Kaluzniak, mike.kaluzniak@state.mn.us, 651-201-2257
 - Link to Document: <https://mn.gov/eera/web/project/592/#collapse1> (enter Document No. 20202-160414-01)

The *EQB Monitor*

520 Lafayette Road North, Saint Paul, MN 55155 - www.eqb.state.mn.us
EQB.Monitor@state.mn.us - (651) 757-2873

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Publication Date: February 18, 2020
Vol. 44, No. 7

Publication Schedule: Mondays at 8:00 AM
Submission Deadline: [View 2020 Schedule](#)
Use the [EQB Monitor Submission Form](#)

In this publication:

- [EQB Announcements](#)
- [Environmental Assessment Worksheet Need Decisions](#)
- [Environmental Assessment Worksheets](#)
- [Environmental Impact Statement Need Decisions](#)
- [Notices](#)

The *EQB Monitor* is a weekly publication announcing environmental review documents, public comment periods and other actions of the Environmental Quality Board. For more information on environmental review, please visit the [EQB website](#).

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Check the [EQB Monitor Schedule](#) and [EQB calendar](#) for more details on *Monitor* deadlines and Board Meetings. Meeting minutes, agendas and additional notices are also posted on the [EQB Website](#).

EQB Announcements

EQB is Hiring an Executive Director

The Minnesota Environmental Quality Board (EQB) is seeking a highly-motivated candidate to serve as Executive Director. The position provides executive leadership to the Board, including members, staff, and agency partners, in administering initiatives, setting organizational direction, and building relationships across Minnesota. To learn more about this opportunity and to apply, visit: <https://mn.gov/mmb/careers/search-for-jobs/> (enter Job ID 38668)

Environmental Review Program Updates for Local Government

Are you a local government unit responsible for preparing environmental documents and performing technical assessments that are required by the State Environmental Review Program? The Environmental Quality Board and the Department of Administration are hosting an educational meeting to talk about recent Environmental Review Program Updates

The meeting is scheduled for Friday, February 21, 2020 at 1pm at the EQB/Minnesota Pollution Control Agency St. Paul Office; 520 Lafayette Road N., St Paul, MN. To register to attend this event, **please RSVP at [EventBrite](#)**.

The first hour will focus on the [Master Contract for Environmental Review and Technical Services](#) followed by a presentation on changes to [Minnesota Rules Chapter 4410](#). The session will be live-streamed and uploaded to the [EQB's website](#) for future review. RSVPs will receive the WebEx link prior to the meeting.

Agenda

1:00 – 1:30 pm: Master Contract Presentation
1:30 – 2:00 pm: Questions and Answers (online participants can submit questions via WebEx)
2:00 – 2:30 pm: Environmental Review Rule Changes
2:30 – 3:00 pm: Questions and Answers (online participants can submit questions via WebEx)

If you have any questions, please contact the [EQB Environmental Review](#) staff at 651-757-2873.

Environmental Assessment Worksheet Need Decisions

The noted responsible governmental unit has made a decision regarding the need for an Environmental Assessment Worksheet in response to a citizen's petition.

- Minnesota Department of Transportation, Shoreham Yards East Side Shipping Container Drop-off (Denied)
 - RGU Contact: Debra Moynihan, 651-366-3618
 - Link to Document: No link provided. Contact the RGU.
- Public Utilities Commission, Freeborn Wind Project (Denied)
 - RGU Contact: Michael Kaluzniak, mike.kaluzniak@state.mn.us, 651-201-2257
 - Link to Document: <https://mn.gov/eera/web/project/592/#collapse1> (enter Document No. 20202-160414-01)

Environmental Assessment Worksheets

Project Title: Summerland Place

Comment Deadline: March 18, 2020

Project Description: Summergate Development is proposing a phased residential development, Summerland Place, on 115 acres in the City of Shakopee. The project includes developing 300 apartment units, 68 townhome units, and 222 detached unit lots totaling 590

housing units over five phases. The project also includes associated utilities, stormwater basins, parking lots, internal roads, an apartment office building, and an apartment community building. Comments on this EAW are requested by March 18, 2020.

Link to Document: No link provided. Contact the RGU for a copy of the document.

Responsible Governmental Unit (RGU): City of Shakopee

RGU Contact Person:

Mark Noble, Senior Planner
485 Gorman Street
Shakopee, Minnesota 55379
952-233-9348
mnoble@shakopeemn.gov

Environmental Impact Statement Need Decisions

The noted responsible governmental unit has determined the following project does not require preparation of an Environmental Impact Statement. The dates given are, respectively, the date of the determination and the date the Environmental Assessment Worksheet notice was published in the EQB Monitor.

- Pollution Control Agency, Oronoco Regional Wastewater System and Water Distribution Project, 2-10-20 (11-18-19)
RGU contact: Kim Grosenheider, 651-757-2170, kim.grosenheider@state.mn.us
Link to Document: <https://www.pca.state.mn.us/regulations/projects-under-mpca-review>

Notices

The Minnesota Department of Natural Resources (DNR) has initiated this action against Respondent Kevin R. Kurth (Respondent or Mr. Kurth) to determine whether cause exists for DNR to direct that restoration of the bed of Little Ranier Lake (#31-660) be undertaken pursuant to Minn. Stat. §§ 103G.2372 and 103G.251 as set forth in the Public Waters Restoration and Replacement Order dated August 4, 2017, and modified by letter dated January 17, 2018.

The hearing will be held on March 4, 2020, County Boardroom, Itasca County District Court, 123 NE 4th St, Grand Rapids, MN 55744, and continuing on until March 5, 2020 if necessary in Conference Room J-135, Itasca County District Court, 123 NE 4th St, Grand Rapids, MN 55744 by the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN. All mail sent to the Administrative Law Judge should be directed to PO Box 64620, St. Paul, MN, 55164-0620.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to Judge Laura Sue Schlatter, Administrative Law Judge, Office of Administrative Hearings, PO Box 64620, St. Paul, Minnesota, 55164-0620. Judge Schlatter's legal assistant, Lisa Armstrong, may be reached at (651) 361-7888 and lisa.armstrong@state.mn.us.

The hearing will be conducted pursuant to the contested case procedures set out in Chapter 14 of Minnesota Statutes, the Rules of the Office of Administrative Hearings, Minn. Rules 1400.5100 – 1400.8500. A copy of these materials may be purchased from the

The attorney for DNR is Pete Farrell, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127. He may be contacted to discuss discovery or informal disposition of this matter at 651-757-1424 and Peter.Farrell@ag.state.mn.us.

FINDINGS OF FACT

1. Little Ranier Lake (Public Water No. 31-660) is a public water within the meaning of Minn. Stat. § 103G.005, subd. 15.
2. DNR has jurisdiction over all public waters including Little Ranier Lake. The boundary for DNR's jurisdiction is the Ordinary High-Water Level (OHWL). Minn. Stat. § 103G.005, subd. 14.
3. Under Minn. Stat. § 103G.245(2), a person must have a public waters work permit to "change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters." In addition, the placement of structures on or in public waters is prohibited when the structure "will obstruct navigation or create a water safety hazard." Minn. R. 6115.0210, subp. 3.A.
4. In January 2016, Mr. Kurth paid for and directed the installation of a chain-link fence within Little Ranier Lake.
5. The fence is approximately 160-feet long with a 30-foot wide gate. The gate opens near a township road right of way.
6. The OHWL of Little Ranier Lake is 1355.1 feet. The OHWL was established by a licensed surveyor.
7. The majority of the fence is placed below the OHWL of Little Ranier Lake. Attached as Exhibit A are true and correct copies of photographs that show the fence's location within Little Ranier Lake.
8. Mr. Kurth installed the fence to deny the public access to Little Ranier Lake.
9. Mr. Kurth's placement of the fence in the bed of a public water below the OHWL restricts access by the public, obstructs navigation and is a safety hazard in violation of Minn. Stat. § 103G.245, subd. 1(2) and Minn. R. 6115.0210, subp. 3.A.
10. On August 4, 2017, DNR issued Mr. Kurth a Public Waters Restoration and Replacement Order (Restoration Order). The Restoration Order required Mr. Kurth to remove the entire fence and supporting structure from Little Ranier Lake by September 8, 2017. A true and correct copy of the Restoration Order is attached as Exhibit B.
11. On August 15, 2017, Mr. Kurth appealed the Restoration Order.
12. On January 17, 2018, Luke Skinner, the Ecological and Water Resources Director at DNR, acting for the Commissioner of DNR, sustained the Restoration Order but modified the deadline for removal to June 1, 2018 (Review Decision). A true and correct copy of the Review Decision is attached hereto as Exhibit C.
13. On January 25, 2018, Mr. Kurth appealed the Restoration Order, as modified by the Review Decision.

ISSUES

Whether DNR appropriately found that Mr. Kurth's placement of the fence in Little Ranier Lake below the OHWL violates the applicable public waters work permit statutes and rules, supporting the issuance of the Restoration Order, as modified by the Review Decision

Grants for community strategies to adapt to climate change

The Minnesota Pollution Control Agency is soliciting grant applications for approximately \$250,000 to research, develop, and implement strategies for communities to adapt to the impacts of climate change and improve community resilience while achieving positive environmental outcomes. These efforts will prevent or reduce the environmental impacts caused by warming temperatures and extreme precipitation while protecting public health and well-being. Refer to the posted request for proposals for complete details. Application deadline is 2:00 pm on March 11, 2020.

Link to document: <https://www.pca.state.mn.us/about-mpca/grants-community-strategies-adapt-climate-change>

Contact person:

Laura Millberg

651-757-2568

laura.millberg@state.mn.us

Attachment B

PUC Letter to EQB – Notice of Decision

February 13, 2020

NO FINAL ORDER AND RECORD OF DECISION ATTACHED

NO FINAL ORDER OR RECORD OF DECISION HAS BEEN FILED



February 13, 2020

Katrina Hapka, Environmental Review Planner
Environmental Quality Board
520 Lafayette Road North
Saint Paul, MN 55155

RE: Petition for an Environmental Assessment Worksheet for Freeborn Wind

Dear Ms. Hapka:

Enclosed is the Public Utilities Commission's response to the January 3, 2020 petition requesting preparation of an Environmental Assessment Worksheet (EAW) for the Freeborn Wind Project.

At its February 6, 2020 Agenda Meeting, the Commission made the following decision:

Deny the petition on the merits pursuant to Minn. R. 4410.1100, subp. 6, and 4410.1700, subp. 7.

Deny the petition pursuant to Minn. R. 4410.4300, subp. 3(D), and 7854.0500, subp. 7.

Authorize the Executive Secretary to issue a Record of Decision on the matter based on the enclosed draft version, incorporating any Commission modifications or technical corrections by staff.

Pursuant to Minn. R. 4410.1100, subp. 8, this letter serves as notice that the Commission has declined the request to prepare an EAW. The Commission will memorialize its decision and set forth its rationale by written order, and maintain a record of its decision on the need for an EAW.

Sincerely,

A handwritten signature in black ink that reads "Michelle Kishner for". The signature is written in a cursive, flowing style.

Will Seuffert, Executive Secretary

Cc:

Carol Overland – Association of Freeborn County Landowners (e-Service)

Christina Brusven - Project Proposer's Representative (e-Service)

Lisa Agrimonti - Project Proposer's Representative (e-Service)

Matthew Harris - Xcel Energy (email)

Denise Wilson, Director - Environmental Review Program, MN EQB (email)

EQB Monitor (online submittal - <https://www.eqb.state.mn.us/eqb-monitor>)

Commission Docket Nos. E-002/WS-17-410 and E-002/TL-17-322

Attachment C

AFCL Letter to EQB – Notice of Decision

February 28, 2020

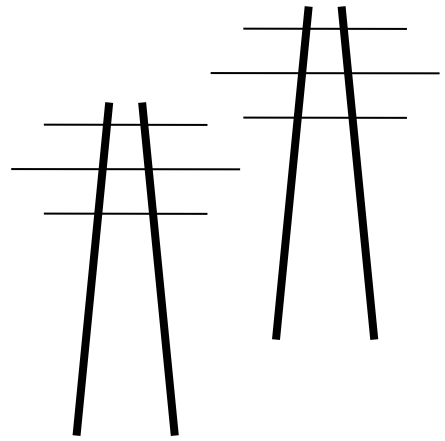
AFCL Inquiry re: PUC failure to produce Order and Record of Decision

NO FINAL ORDER OR RECORD OF DECISION HAS BEEN FILED

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



February 28, 2020

Katie Pratt
Interim Executive Director
Environmental Quality Board
520 Lafayette Road North
Saint Paul, MN 55155

Katie.Pratt@state.mn.us

RE: Public Utilities Commission Failure to Issue Order and Record of Decision
Petition for Environmental Assessment Worksheet
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. Pratt and Ms. Wilson:

Association of Freeborn County Landowners filed its Petition for Environmental Assessment Worksheet for the Freeborn Wind Project with the EQB on January 1, 2020. On January 17, 2020, the Public Utilities Commission requested an extension of time to address the Petition:

Because of these requirements, the Commission requests an additional 15 working days to have the matter come before the Commission (tentatively scheduled for the February 6, 2020 Agenda Meeting). Per point 6 of your letter, the Commission will prepare a record of decision as part of its order in Commission Docket Number E002/WS-17-410, and provide notification as provided in Minnesota Rule 4410.1000.

Letter, January 17, 2020. The extension request was granted by the EQB on January 21, 2020.

The Public Utilities Commission met on February 6, 2020. One week later, the Commission sent a letter to the EQB with “notice” of its decision, framed as the Public Utilities Commission’s response to the January 3, 2020 petition. There was no Order or Record of Decision attached. The Commission’s letter stated:

At its February 6, 2020 Agenda Meeting, the Commission made the following decision:

Deny the petition on the merits pursuant to Minn. R. 4410.1100, subp. 6, and 4410.1700, subp. 7.

Deny the petition pursuant to Minn. R. 4410.4300, subp. 3(D), and 7854.0500, subp. 7.

Authorize the Executive Secretary to issue a Record of Decision on the matter based on the enclosed draft version, incorporating any Commission modifications or technical corrections by staff.

Pursuant to Minn. R. 4410.1100, subp. 8, this letter serves as notice that the Commission has declined the request to prepare an EAW. The Commission will memorialize its decision and set forth its rationale by written order, and maintain a record of its decision on the need for an EAW.

Letter to EQB, February 13, 2020.

Promises, promises... Despite the statement that the “Commission will memorialize its decision and set forth its rationale by written order, and maintain a record of its decision on the need for an EAW,” as of this date, that has not happened. It is now beyond the extension of time allotted to the Commission, no Order or Record of Decision with specific Findings of Fact has been issued, filed, or provided to Association of Freeborn County Landowners.

The EQB’s rules require a Record of Decision with specific Findings of Fact. As of this date, the Commission has not complied with Minn. R. 4410.1700, Subp. 4.

At this time, I request that the EQB take action to secure issuance of the Commission’s Order and Record of Decision.

Very truly yours



Carol A. Overland
Attorney at Law

cc: Katrina Hapka, Environmental Review Planner Env.Review@state.mn.us
Denise Wilson, Director, Environmental Review Program denise.wilson@state.mn.us
Association of Freeborn County Landowners
All parties in Freeborn Wind via eDockets

Attachment D

AFCL Petition for Environmental Assessment Worksheet

January 1, 2020

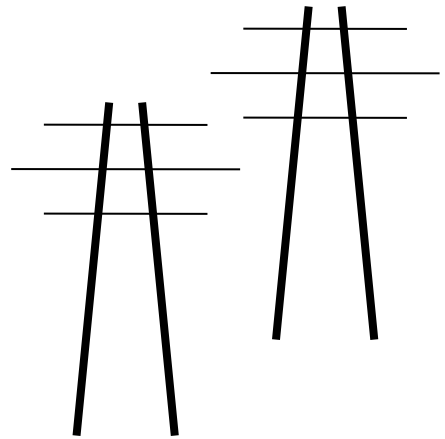
AFCL Petition for Environmental Worksheet Cover Letter and Petition

Signature pages (99 with over 380 signatures) and Exhibits in EQB record and
PUC eDocket WS-17-410

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



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

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



Carol A. Overland #254617
Attorney at Law
LEGALECTRIC
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

**ATTORNEY FOR
ASSOCIATION OF FREEBORN
COUNTY LANDOWNERS**

SERVICE LIST

ENVIRONMENTAL QUALITY BOARD:

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

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

Will Seuffert
Executive Director
Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155

via email: will.seuffert@state.mn.us

FREEBORN WIND PROJECT PROPOSER – XCEL ENERGY:

Lisa Agrimonti
Counsel for Xcel Energy
Fredrickson & Byron
200 S. 6th St., Suite 4000
Minneapolis, MN 55402-1425
LAgrimonti@fredlaw.com

Christina Brusven
Counsel for Xcel Energy
Fredrickson & Byron
200 S. 6th St., Suite 4000
Minneapolis, MN 55402-1425
CBrusven@fredlaw.com

Courtesy copy to:

MINNESOTA PUBLIC UTILITIES COMMISSION

Ryan Barlow
General Counsel
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101
ryan.barlow@state.mn.us

COMMERCE-EERA

Linda S. Jensen
Asst. Attorney General
Department of Commerce-EERA
85 – 7th Place East, Suite 500
St. Paul, MN 55101
linda.s.jensen@ag.state.mn.us

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.

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

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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,

January 1, 2020



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**ATTORNEY FOR
ASSOCIATION OF FREEBORN
COUNTY LANDOWNERS**

PETITION FOR ENVIRONMENTAL ASSESSMENT WORKSHEET

Executed Petitions

AFCL Exhibits

Service documents and lists have been deleted to lessen bulk . Exhibits identified in lower right corner.

Exhibit A - Order Establishing General Wind Permit Standards, PUC Docket G,E-999/M-07-1102.

Exhibit B - Order Granting Freeborn Wind Site Permit (December 19, 2018).

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).

Exhibit G - AFCL Motion for Contested Case and Environmental Review (12/11/2019)(denied 12/19/2019).

Exhibit H - Permit list, Invenergy App. p. 111-113 (20176-132804-01).

Exhibit I - AFCL Reconsideration (January 9, 2019) see p. 13-15.

Exhibit J - AFCL Comment including Motion for Remand (March 13, 2019).

Exhibit K - AFCL Request for Notice April 23, 2019

Exhibit L - AFCL Request for Notice November 25, 2019

Exhibit M - PUC staff email (4/23/2019)

Exhibit N - London Township Ordinance 17-1, p. 5-6, Section 3.

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

Exhibit P - Invenergy Application, Appendix B, p. 12

Exhibit Q - AFCL Comment and Motion for Contested Case (11-12-2019)

Exhibit R - Bent Tree Noise Monitoring Study, Phase II

Exhibit S - Nelson Comment (11-12-2019)

Exhibit T - AFCL IR-9

Exhibit U - AFCL IR-10

Exhibit V – SONAR September 20, 2001

Exhibit W, Stine Letter, September 12, 2016

Attachment E

PUC Staff Briefing Papers for January 6, 2020 Agenda Meeting

Staff Briefing Papers

Meeting Date February 6, 2020

Agenda Item **8

Company Northern States Power Company (Xcel Energy)

Docket No. **E002/WS-17-410**

**In the Matter of the Application of Northern States Power Company for a
Site Permit for the 84 MW Freeborn Wind Farm in Freeborn County,
Minnesota**

- Issues
1. What action should the Commission take on the January 1, 2020 petition from the Association of Freeborn County Landowners requesting preparation of an Environmental Assessment Worksheet for the Freeborn Wind Project, an 84 MW Large Wind Energy Conversion System in Freeborn County?
 2. If the Commission grants the EAW petition, what processes and procedures should be adopted?

Staff Michael Kaluzniak mike.kaluzniak@state.mn.us 651.201.2257



Relevant Documents

Date

EQB Letter Referring Petition to the Commission	January 15, 2020
AFCL EAW Petition as Submitted to EQB (27 parts)	January 15, 2020
PUC Letter to EQB Requesting Extension	January 17, 2020

Attachments

- A. EQB Environmental Assessment Worksheet Form (July 2013 Version)
- B. Draft Record of Decision for EAW Petition

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issues

1. What action should the Commission take on the January 1, 2020 petition from the Association of Freeborn County Landowners requesting preparation of an Environmental Assessment Worksheet (EAW) for the Freeborn Wind Project, an 84 MW Large Wind Energy System to be constructed in Freeborn County?
2. If the Commission grants the EAW petition, what processes and procedures should be adopted?

II. Statutes and Rules

The Minnesota Environmental Protection Act¹ (MEPA) requires an environmental review whenever a state agency, private entity, or local government proposes a major governmental action that could significantly affect the quality of the environment. Governmental actions include activities that are conducted, permitted, assisted, financed, regulated, or approved by units of government.

The Minnesota Environmental Quality Board (EQB) adopted Minnesota Rules Chapter 4410 in part to implement environmental review procedures. Under Minnesota Rule 4410.1100, any person may request the preparation of an EAW² on a project by filing a petition that contains the signatures and mailing addresses of at least 100 individuals who reside or own property in the state. The EQB must determine whether the petition includes the required information and designates the Responsible Governmental Unit (RGU) that will decide on whether or not to grant the petition.

The Commission must order the preparation of an EAW if the evidence presented demonstrates that the project may have the potential for significant environmental effects. The Commission must deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. The Commission must maintain a record, including specific findings of fact, of its decision on the need for an EAW. The

¹ Minnesota Statutes, Chapter 116D.

² An EAW is defined under EQB rules as “a brief document which is designed to set out the basic facts necessary to determine whether an Environmental Impact Statement (EIS) is required for a proposed project or to initiate the scoping process for an EIS” (Minnesota Rule 4410.0200, Subpart 24). In contrast, an Environmental Assessment (EA) is defined under Commission rules as “a written document that describes the human and environmental impacts of a proposed large electric power generating plant or high voltage transmission line and alternative routes or sites and methods to mitigate such impacts” (Minnesota Rule 7850.1000, Subpart 7).

Commission has 30 days from the date of the receipt of the petition to decide on the need for an EAW³.

In deciding whether a project has the potential for significant environmental effects, Minnesota Rule 4410.1700, subp. 7 requires the following factors to be considered:

1. Type, extent, and reversibility of environmental effects;
2. Cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
3. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
4. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs

The Commission must notify the proposer, the EQB staff, and the petitioner's representative of its decision within five days. The EQB staff must publish notice of the Commission's decision concerning the petition in the EQB Monitor.⁴

The process for preparation of an EAW includes the following steps:

1. The project proposer supplies all necessary data to the Responsible Governmental Unit, which is assigned responsibility to conduct the review according to the EQB rules.
2. The RGU prepares the EAW by completing the standard form supplied by the Environmental Quality Board.
3. The EAW is distributed with public notice of its availability for review and comment. The comment period is 30 calendar days. Certain state, federal, and local agencies always

³ RGUs are typically provided 15 days from the date of receipt of the petition to decide on the need for an EAW. Because the Commission meets only on a periodic basis, this time period may be extended by the Commission for another 15 days (Minnesota Rule 4410.1000, Subp. 7)

⁴ Minnesota Rule 4410.1100, Subp. 8.

receive EAWs for review. Any person may review and comment in writing on an EAW. A public meeting to receive oral comments is optional at the discretion of the RGU, but is not commonly held.

4. The RGU responds to the comments received and makes a decision on the need for an EIS based on the EAW, comments received, and responses to the comments. The RGU and other units of government may require modifications to the project as part of their permits to mitigate environmental impacts as disclosed through the EAW process

Minnesota Rule 4410.4300 Subpart 3(C) and 4410.440 Subpart 3 state that the PUC is the RGU for construction of large electric power generating plants and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, and the environmental review must be conducted according to Minnesota Rules parts 7849.1000 to 7849.2100 and chapter 7850.⁵

Minnesota Statute § 216F.02 (Exceptions) provides that certain portions of the Minnesota Power Plant Siting Act (Minnesota Statutes Chapter 215E) do not apply to the siting of large wind energy conversion systems (LWECS). These exceptions include the provisions requiring the preparation of an environmental impact statement (Minnesota Statute 216E.03, Subd. 5) and an environmental assessments (Minnesota Statute 216E.04, Subd. 5).

Minnesota Statute § 216F.05 (4) requires that the Commission adopt rules governing LWECS site permit applications that establish the requirements for environmental review of the LWECS. Minnesota Rule 7854.0500, Subpart 7 (Environmental Impacts) requires that an applicant for a site permit shall include with the application an analysis of the potential impacts of the project, proposed mitigation 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;

⁵ EQB updated the Mandatory EAW and EIS categories in Minnesota Rules chapter 4410 on December 16, 2019. Among other things, the rules identified the Commission's role as RGU for environmental review of certain electrical generation facilities

<https://www.eqb.state.mn.us/sites/default/files/documents/ar4157st.pdf>

- 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

Minnesota Rule 7829.3000, Subpart 1 provides that petitions for rehearing, amendment, vacation, reconsideration or reargument must be filed with 20 days of the date of Commission's decision or order. Subpart 7 of the same rule states that "a second petition for rehearing, amendment, vacation, reconsideration, or reargument of a commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied, will not be entertained".

Minnesota Rule 7854.0500, Subpart 7 requires that LWECS site permit applications include an analysis of the potential impacts of the project, proposed mitigation measures, and any adverse environmental effects that cannot be avoided. Additionally the rule specifically provides that 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".

III. Background

On January 1, 2020, the EQB received a Citizen's Petition from Carol Overland on behalf of the AFCL requesting the preparation of an EAW for the Freeborn Wind Project, an 84 MW LWECS previously permitted to be constructed in Freeborn County.

On January 3, 2020, EQB notified the Commission it had reviewed AFCL's petition. Based on its review, EQB concluded that the Commission is the appropriate governmental unit to decide the need for an EAW.

On January 17, 2020, the Executive Secretary requested an extension of 15 days from EQB in order to allow time for the Commission to reach its decision on the petition.

IV. Comments Received

Association of Freeborn County Landowners

AFCL submitted its January 1, 2020 petition to the EQB under Minnesota Rules 4410.1100 and requested that the petition be forwarded to the Commission as the appropriate governmental unit for a decision regarding preparation of an EAW for the Freeborn Wind Project. AFCL stated that its petition included 380 signatories and material evidence of significant environmental effects. The petition included several exhibits totaling more than 1,500 pages, much of which is found in the docket. The petition did not include the names, signatures and addresses of the signatories. Two exhibits (B and K) were identified as exhibits but were not included in the files provided.

AFCL asserted that, as an electric generating facility over 50 MW in capacity, significant environmental effects are legally presumed, and a mandatory EAW and EIS is required under Minnesota Rules 4100.4300 and 4410.4400.

AFCL claimed that Xcel's request for a site permit amendment⁶, 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".

In summary, AFCL asserted that it has demonstrated material evidence of potential for significant environmental effects and reiterated its request for an EIS on the project.

⁶ Xcel Energy petitioned the Commission on August 20, 2019 for a permit amendment to modify the project's wind turbine model and turbine layout. The Commission considered the matter at its January 9, 2020 Agenda Meeting and has delayed issuance of the order of its final decision as required by Minnesota Rule 4410.3100.

Environmental Quality Board

In their January 3, 2020, EQB referred the matter to the Commission and stated that the PUC is the appropriate governmental unit to decide the need for an EAW. EQB also outlined the requirements for environmental review as found in Minnesota Rules, chapter 4410, and the procedural steps required to respond to the petition.

Commission counsel was contacted by EQB to explain that the exhibits to AFCL's petition were too large for distribution via email and offered to provide them via its file transfer protocol site (<ftp://files.pca.state.mn.us/pub/tmp>). Staff advised EQB that the Commission requires electronic service of all filings. Because the petition and referral letter were not filed to the Commission's e-Docketing system, staff parsed the petition data from EQB to meet the e-Dockets system's 10 megabyte limitation on file size and submitted 27 files of the petition and the referral letter to the e-Dockets system

In a subsequent conversation, EQB staff indicated that the Commission could be provided an additional 15 working days to reach its decision upon written request. Staff filed a letter with EQB staff requesting an extension on January 17, 2020.

V. Staff Analysis

EAW Petition Deficiency

Staff notes that AFCL's petition as filed with the EQB is deficient as it does not appear to satisfy the requirements of Minnesota Rule 4410.1100, Subpart 1 in that the petition did not include the signatures and mailing addresses of at least 100 individuals who reside or own property in the state. The Commission may elect to dismiss the petition on that basis. Staff will continue its analysis to examine procedural and substantive items for the Commission's consideration.

Finality of Commission's Previous Decisions

AFCL's petition requests that the Commission direct the development of an Environmental Impact Statement on the entire project, including that portion previously approved by Commission order. As noted above, Minnesota Rule 7829.3000 requires that petitions for reconsideration must be filed within 20 days of the Commission's decision or order.

Additionally, second petitions for reconsiderations by the same party on the same grounds that have been previously considered and denied are not permitted. To the extent that the petition addresses issued in the Commission's orders, including decisions for environmental review, it is untimely.

Staff notes that should the Commission decide to direct the preparation of an EAW for the permit amendment changes requested by Xcel Energy, it would need to revisit its previous consideration of the permit amendment and adjust its decision accordingly.

Applicability of EQB Mandatory EAW and EIS Categories

A plain reading of the statutes and rules provided in Section II above demonstrates that the Minnesota Legislature considered and rejected establishing a requirement for preparation of EISs for LWECS site permit applications.

The Commission is not required to provide a legal analysis of the statutory intent and applicability of EQB rules to projects reviewed by the Commission, but its decision must be reasonable and neither arbitrary nor capricious. Notwithstanding the petition's deficiencies, the Commission may wish to consider the petition under EQB's rules and create a record of its decision supported by substantial evidence.

Decision on Preparation of an EAW

Notwithstanding the previous staff analysis, when considering whether to prepare an EAW the primary consideration when deciding is whether the project presents significant human and environmental effects. When evaluating the significance factors, staff considered whether the project proposer has made substantial changes in the project that affect the potential significant adverse environmental effects of the project. Additionally, staff considered whether there is substantial new information or new circumstances that significantly affect the potential new information or new circumstances that were not previously considered or which significantly affect the availability of prudent and feasible alternatives with lesser environmental effects.

In consideration of the existing record of Docket 17-410, Staff does not believe that changes to the project are not substantially sufficient to justify undertaking additional analysis as provided in an EAW for several reasons. First, mitigation measures have already been established for any potentially significant impact of the project such as noise, shadow flicker and so forth. Secondly, while the character and magnitude of the impact sources may be different, the current permit provisions allow for adjustments to compensate for those differences. For example, the project layout was modified to accommodate the noise footprint of the newer turbine model by moving turbine locations to provide a three-by-five rotor diameter setback. Similarly, the permittee has agreed to monitor and as necessary curtail turbine operation as necessary to ensure that nonparticipating landowners do not experience more than 30 hours per year of shadow flicker. Third, monitoring for permit compliance remains ongoing through development of the project through requirements such as bird mortality studies, post-construction noise

monitoring, and other downstream permitting requirements.

An additional analysis for considering the significance of the petition is by evaluating the criteria of Minnesota Rule 4410.1700, subp. 7. As discussed above, the type, extent and reversibility of environmental effects have been thoroughly considered and addressed. Cumulative potential effects are not significant because the project (including the permit amendment changes) do not result in increased impacts when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory is well established, specific, and can reasonably be expected to effectively mitigate identified potential impacts. Finally, the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs has been well documented and addressed within the permit review process and permit itself.

In summary, staff does not believe the EAW petition included sufficient material evidence indicating that, because of the nature or location of the proposed project, there may be potential for significant environmental effects. Because of the reasons mentioned above, staff also does not recommend the Commission consider requiring a discretionary EAW.

Staff recommends the Commission deny the petition for an EAW for the reasons stated above. Staff has prepared a draft Record of Decision (ROD) for the petition and requests that authority be delegated to the Executive Secretary to submit a ROD based on the enclosed draft and any modifications the Commission provides.

VI. Decision Options

1. Deny the petition for development of an Environmental Assessment Worksheet.
2. Grant the Petition pursuant to Minn. R. 4410.1100, subp. 6 and 4410.1700, subp. 7, and:
 - a. approve the Petition and direct Xcel Energy, in consultation with DOC and other agencies, to prepare an environmental assessment worksheet for the Freeborn Wind Project.
 - b. direct Xcel to provide data as required by MR 4410.1400 to complete the enclosed EAW Form.
 - c. direct staff to establish a comment period on the EAW.

- d. delegate authority to the Executive Secretary to undertake notice and administrative functions as required to prepare an EAW.
- 3. Deny the Petition for lack of jurisdiction.
- 4. Deny the Petition on the merits pursuant to Minn. R. 4410.1100, subp. 6 and 4410.1700, subp. 7.
- 5. Authorize the Executive Secretary to issue a Record of Decision on the matter based on the enclosed draft version, incorporating any Commission modifications.
- 6. Take some other action deemed appropriate

Staff Recommendation: **4 and 5, OR 3, 4 and 5**

ENVIRONMENTAL ASSESSMENT WORKSHEET

This Environmental Assessment Worksheet (EAW) form and EAW Guidelines are available at the Environmental Quality Board's website at:

<http://www.eqb.state.mn.us/EnvRevGuidanceDocuments.htm>. The EAW form provides information about a project that may have the potential for significant environmental effects. The EAW Guidelines provide additional detail and resources for completing the EAW form.

Cumulative potential effects can either be addressed under each applicable EAW Item, or can be addresses collectively under EAW Item 19.

Note to reviewers: Comments must be submitted to the RGU during the 30-day comment period following notice of the EAW in the *EQB Monitor*. Comments should address the accuracy and completeness of information, potential impacts that warrant further investigation and the need for an EIS.

1. Project title:

2. Proposer:

Contact person:

Title:

Address:

City, State, ZIP:

Phone:

Fax:

Email:

3. RGU

Contact person:

Title:

Address:

City, State, ZIP:

Phone:

Fax:

Email:

4. Reason for EAW Preparation: (check one)

Required:

☐ EIS Scoping

☐ Mandatory EAW

Discretionary:

☐ Citizen petition

☐ RGU discretion

☐ Proposer initiated

If EAW or EIS is mandatory give EQB rule category subpart number(s) and name(s):

5. Project Location:

County:

City/Township:

PLS Location (1/4, 1/4, Section, Township, Range):

Watershed (81 major watershed scale):

GPS Coordinates:

Tax Parcel Number:

At a minimum attach each of the following to the EAW:

- County map showing the general location of the project;
- U.S. Geological Survey 7.5 minute, 1:24,000 scale map indicating project boundaries (photocopy acceptable); and
- Site plans showing all significant project and natural features. Pre-construction site plan and post-construction site plan.

6. Project Description:

- Provide the brief project summary to be published in the *EQB Monitor*, (approximately 50 words).
- Give a complete description of the proposed project and related new construction, including infrastructure needs. If the project is an expansion include a description of the existing facility. Emphasize: 1) construction, operation methods and features that will cause physical manipulation of the environment or will produce wastes, 2) modifications to existing equipment or industrial processes, 3) significant demolition, removal or remodeling of existing structures, and 4) timing and duration of construction activities.

- Project magnitude:

Total Project Acreage	
Linear project length	
Number and type of residential units	
Commercial building area (in square feet)	
Industrial building area (in square feet)	
Institutional building area (in square feet)	
Other uses – specify (in square feet)	
Structure height(s)	

- Explain the project purpose; if the project will be carried out by a governmental unit, explain the need for the project and identify its beneficiaries.
- Are future stages of this development including development on any other property planned or likely to happen? ☐Yes ☐No
If yes, briefly describe future stages, relationship to present project, timeline and plans for environmental review.
- Is this project a subsequent stage of an earlier project? ☐Yes ☐No
If yes, briefly describe the past development, timeline and any past environmental review.

7. **Cover types:** Estimate the acreage of the site with each of the following cover types before and after development:

	Before	After		Before	After
Wetlands			Lawn/landscaping		
Deep water/streams			Impervious surface		
Wooded/forest			Stormwater Pond		
Brush/Grassland			Other (describe)		
Cropland					
			TOTAL		

8. **Permits and approvals required:** List all known local, state and federal permits, approvals, certifications and financial assistance for the project. Include modifications of any existing permits, governmental review of plans and all direct and indirect forms of public financial assistance including bond guarantees, Tax Increment Financing and infrastructure. *All of these final decisions are prohibited until all appropriate environmental review has been completed. See Minnesota Rules, Chapter 4410.3100.*

Unit of government

Type of application

Status

Cumulative potential effects may be considered and addressed in response to individual EAW Item Nos. 9-18, or the RGU can address all cumulative potential effects in response to EAW Item No. 19. If addressing cumulative effect under individual items, make sure to include information requested in EAW Item No. 19

9. Land use:

- a. Describe:
 - i. Existing land use of the site as well as areas adjacent to and near the site, including parks, trails, prime or unique farmlands.
 - ii. Plans. Describe planned land use as identified in comprehensive plan (if available) and any other applicable plan for land use, water, or resources management by a local, regional, state, or federal agency.
 - iii. Zoning, including special districts or overlays such as shoreland, floodplain, wild and scenic rivers, critical area, agricultural preserves, etc.
- b. Discuss the project's compatibility with nearby land uses, zoning, and plans listed in Item 9a above, concentrating on implications for environmental effects.
- c. Identify measures incorporated into the proposed project to mitigate any potential incompatibility as discussed in Item 9b above.

10. Geology, soils and topography/land forms:

- a. Geology - Describe the geology underlying the project area and identify and map any susceptible geologic features such as sinkholes, shallow limestone formations, unconfined/shallow aquifers, or karst conditions. Discuss any limitations of these features for the project and any effects the project could have on these features. Identify any project designs or mitigation measures to address effects to geologic features.
- b. Soils and topography - Describe the soils on the site, giving NRCS (SCS) classifications and descriptions, including limitations of soils. Describe topography, any special site conditions relating to erosion potential, soil stability or other soils limitations, such as steep slopes, highly permeable soils. Provide estimated volume and acreage of soil excavation and/or grading. Discuss impacts from project activities (distinguish between construction and operational activities) related to soils and topography. Identify measures during and after project construction to address soil limitations including stabilization, soil corrections or other measures. Erosion/sedimentation control related to stormwater runoff should be addressed in response to Item 11.b.ii.

NOTE: For silica sand projects, the EAW must include a hydrogeologic investigation assessing the potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water. Descriptions of water resources and potential effects from the project in EAW Item 11 must be consistent with the geology, soils and topography/land forms and potential effects described in EAW Item 10.

11. Water resources:

- a. Describe surface water and groundwater features on or near the site in a.i. and a.ii. below.
 - i. Surface water - lakes, streams, wetlands, intermittent channels, and county/judicial ditches. Include any special designations such as public waters, trout stream/lake, wildlife lakes, migratory waterfowl feeding/resting lake, and outstanding resource value water. Include water quality impairments or special designations listed on the current MPCA 303d Impaired Waters List that are within 1 mile of the project. Include DNR Public Waters Inventory number(s), if any.
 - ii. Groundwater – aquifers, springs, seeps. Include: 1) depth to groundwater; 2) if project is within a MDH wellhead protection area; 3) identification of any onsite and/or nearby wells, including unique numbers and well logs if available. If there are no wells known on site or nearby, explain the methodology used to determine this.
- b. Describe effects from project activities on water resources and measures to minimize or mitigate the effects in Item b.i. through Item b.iv. below.
 - i. Wastewater - For each of the following, describe the sources, quantities and composition of all sanitary, municipal/domestic and industrial wastewater produced or treated at the site.

- 1) If the wastewater discharge is to a publicly owned treatment facility, identify any pretreatment measures and the ability of the facility to handle the added water and waste loadings, including any effects on, or required expansion of, municipal wastewater infrastructure.
 - 2) If the wastewater discharge is to a subsurface sewage treatment systems (SSTS), describe the system used, the design flow, and suitability of site conditions for such a system.
 - 3) If the wastewater discharge is to surface water, identify the wastewater treatment methods and identify discharge points and proposed effluent limitations to mitigate impacts. Discuss any effects to surface or groundwater from wastewater discharges.
- ii. Stormwater - Describe the quantity and quality of stormwater runoff at the site prior to and post construction. Include the routes and receiving water bodies for runoff from the site (major downstream water bodies as well as the immediate receiving waters). Discuss any environmental effects from stormwater discharges. Describe stormwater pollution prevention plans including temporary and permanent runoff controls and potential BMP site locations to manage or treat stormwater runoff. Identify specific erosion control, sedimentation control or stabilization measures to address soil limitations during and after project construction.
- iii. Water appropriation - Describe if the project proposes to appropriate surface or groundwater (including dewatering). Describe the source, quantity, duration, use and purpose of the water use and if a DNR water appropriation permit is required. Describe any well abandonment. If connecting to an existing municipal water supply, identify the wells to be used as a water source and any effects on, or required expansion of, municipal water infrastructure. Discuss environmental effects from water appropriation, including an assessment of the water resources available for appropriation. Identify any measures to avoid, minimize, or mitigate environmental effects from the water appropriation.
- iv. Surface Waters
- a) Wetlands - Describe any anticipated physical effects or alterations to wetland features such as draining, filling, permanent inundation, dredging and vegetative removal. Discuss direct and indirect environmental effects from physical modification of wetlands, including the anticipated effects that any proposed wetland alterations may have to the host watershed. Identify measures to avoid (e.g., available alternatives that were considered), minimize, or mitigate environmental effects to wetlands. Discuss whether any required compensatory wetland mitigation for unavoidable wetland impacts will occur in the same minor or major watershed, and identify those probable locations.
 - b) Other surface waters- Describe any anticipated physical effects or alterations to surface water features (lakes, streams, ponds, intermittent channels, county/judicial ditches) such as draining, filling, permanent inundation, dredging, diking, stream diversion, impoundment, aquatic plant removal and riparian alteration. Discuss direct and indirect environmental effects from physical modification of water features. Identify measures to avoid, minimize, or mitigate environmental effects to surface water features, including in-water Best Management Practices that are proposed to avoid or minimize turbidity/sedimentation while physically altering the

water features. Discuss how the project will change the number or type of watercraft on any water body, including current and projected watercraft usage.

12. Contamination/Hazardous Materials/Wastes:

- a. Pre-project site conditions - Describe existing contamination or potential environmental hazards on or in close proximity to the project site such as soil or ground water contamination, abandoned dumps, closed landfills, existing or abandoned storage tanks, and hazardous liquid or gas pipelines. Discuss any potential environmental effects from pre-project site conditions that would be caused or exacerbated by project construction and operation. Identify measures to avoid, minimize or mitigate adverse effects from existing contamination or potential environmental hazards. Include development of a Contingency Plan or Response Action Plan.
- b. Project related generation/storage of solid wastes - Describe solid wastes generated/stored during construction and/or operation of the project. Indicate method of disposal. Discuss potential environmental effects from solid waste handling, storage and disposal. Identify measures to avoid, minimize or mitigate adverse effects from the generation/storage of solid waste including source reduction and recycling.
- c. Project related use/storage of hazardous materials - Describe chemicals/hazardous materials used/stored during construction and/or operation of the project including method of storage. Indicate the number, location and size of any above or below ground tanks to store petroleum or other materials. Discuss potential environmental effects from accidental spill or release of hazardous materials. Identify measures to avoid, minimize or mitigate adverse effects from the use/storage of chemicals/hazardous materials including source reduction and recycling. Include development of a spill prevention plan.
- d. Project related generation/storage of hazardous wastes - Describe hazardous wastes generated/stored during construction and/or operation of the project. Indicate method of disposal. Discuss potential environmental effects from hazardous waste handling, storage, and disposal. Identify measures to avoid, minimize or mitigate adverse effects from the generation/storage of hazardous waste including source reduction and recycling.

13. Fish, wildlife, plant communities, and sensitive ecological resources (rare features):

- a. Describe fish and wildlife resources as well as habitats and vegetation on or in near the site.
- b. Describe rare features such as state-listed (endangered, threatened or special concern) species, native plant communities, Minnesota County Biological Survey Sites of Biodiversity Significance, and other sensitive ecological resources on or within close proximity to the site. Provide the license agreement number (LA-____) and/or correspondence number (ERDB _____) from which the data were obtained and attach the Natural Heritage letter from the DNR. Indicate if any additional habitat or species survey work has been conducted within the site and describe the results.
- c. Discuss how the identified fish, wildlife, plant communities, rare features and ecosystems may be affected by the project. Include a discussion on introduction and spread of invasive species from the project construction and operation. Separately discuss effects to known threatened and endangered species.

- d. Identify measures that will be taken to avoid, minimize, or mitigate adverse effects to fish, wildlife, plant communities, and sensitive ecological resources.

14. Historic properties:

Describe any historic structures, archeological sites, and/or traditional cultural properties on or in close proximity to the site. Include: 1) historic designations, 2) known artifact areas, and 3) architectural features. Attach letter received from the State Historic Preservation Office (SHPO). Discuss any anticipated effects to historic properties during project construction and operation. Identify measures that will be taken to avoid, minimize, or mitigate adverse effects to historic properties.

15. Visual:

Describe any scenic views or vistas on or near the project site. Describe any project related visual effects such as vapor plumes or glare from intense lights. Discuss the potential visual effects from the project. Identify any measures to avoid, minimize, or mitigate visual effects.

16. Air:

- a. Stationary source emissions - Describe the type, sources, quantities and compositions of any emissions from stationary sources such as boilers or exhaust stacks. Include any hazardous air pollutants, criteria pollutants, and any greenhouse gases. Discuss effects to air quality including any sensitive receptors, human health or applicable regulatory criteria. Include a discussion of any methods used assess the project's effect on air quality and the results of that assessment. Identify pollution control equipment and other measures that will be taken to avoid, minimize, or mitigate adverse effects from stationary source emissions.
- b. Vehicle emissions - Describe the effect of the project's traffic generation on air emissions. Discuss the project's vehicle-related emissions effect on air quality. Identify measures (e.g. traffic operational improvements, diesel idling minimization plan) that will be taken to minimize or mitigate vehicle-related emissions.
- c. Dust and odors - Describe sources, characteristics, duration, quantities, and intensity of dust and odors generated during project construction and operation. (Fugitive dust may be discussed under item 16a). Discuss the effect of dust and odors in the vicinity of the project including nearby sensitive receptors and quality of life. Identify measures that will be taken to minimize or mitigate the effects of dust and odors.

17. Noise

Describe sources, characteristics, duration, quantities, and intensity of noise generated during project construction and operation. Discuss the effect of noise in the vicinity of the project including 1) existing noise levels/sources in the area, 2) nearby sensitive receptors, 3) conformance to state noise standards, and 4) quality of life. Identify measures that will be taken to minimize or mitigate the effects of noise.

18. Transportation

- a. Describe traffic-related aspects of project construction and operation. Include: 1) existing and proposed additional parking spaces, 2) estimated total average daily traffic generated, 3) estimated maximum peak hour traffic generated and time of occurrence, 4) indicate source of trip generation rates used in the estimates, and 5) availability of transit and/or other alternative transportation modes.
- b. Discuss the effect on traffic congestion on affected roads and describe any traffic improvements necessary. The analysis must discuss the project's impact on the regional transportation system. *If the peak hour traffic generated exceeds 250 vehicles or the total daily trips exceeds 2,500, a traffic impact study must be prepared as part of the EAW.* Use the format and procedures described in the Minnesota Department of Transportation's Access Management Manual, Chapter 5 (available at: <http://www.dot.state.mn.us/accessmanagement/resources.html>) or a similar local guidance,
- c. Identify measures that will be taken to minimize or mitigate project related transportation effects.

19. Cumulative potential effects: (Preparers can leave this item blank if cumulative potential effects are addressed under the applicable EAW Items)

- a. Describe the geographic scales and timeframes of the project related environmental effects that could combine with other environmental effects resulting in cumulative potential effects.
- b. Describe any reasonably foreseeable future projects (for which a basis of expectation has been laid) that may interact with environmental effects of the proposed project within the geographic scales and timeframes identified above.
- c. Discuss the nature of the cumulative potential effects and summarize any other available information relevant to determining whether there is potential for significant environmental effects due to these cumulative effects.

20. Other potential environmental effects: If the project may cause any additional environmental effects not addressed by items 1 to 19, describe the effects here, discuss the how the environment will be affected, and identify measures that will be taken to minimize and mitigate these effects.

RGU CERTIFICATION. *(The Environmental Quality Board will only accept **SIGNED** Environmental Assessment Worksheets for public notice in the EQB Monitor.)*

I hereby certify that:

- The information contained in this document is accurate and complete to the best of my knowledge.
- The EAW describes the complete project; there are no other projects, stages or components other than those described in this document, which are related to the project as connected actions or phased actions, as defined at Minnesota Rules, parts 4410.0200, subparts 9c and 60, respectively.
- Copies of this EAW are being sent to the entire EQB distribution list.

Signature _____

Date _____

Title _____

MINNESOTA PUBLIC UTILITIES COMMISSION

RECORD OF DECISION

In the Matter of the Determination of Need for an Environmental Assessment Worksheet for the Freeborn Wind Project in Response to a January 1, 2020 Citizens' Petition forwarded by the Environmental Quality Board

1. The Commission issued a site permit for the Freeborn Wind Farm (project) on December 19, 2018.¹ The Commission subsequently amended the site permit on May 10, 2019.² On October 22, 2019, the Commission transferred ownership of the project from Freeborn Wind Energy to Northern States Power Company (Xcel Energy).³
2. The Commission received three petitions for reconsideration of its December 19, 2018 Order. On February 26, 2019, the Commission issued an Order to continue the proceedings and soliciting comments.⁴ The Commission received two petitions for reconsideration of its May 10, 2019 Order on May 30, 2019.⁵ After denying the petitions, the Commission received on August 1, 2019 an Appeal of the Commission's Amended Order filed with the Appellate Court.⁶
3. On January 3, 2020, Commission staff received an email notification from EQB identifying the Commission as the Responsible Governmental Unit to review a citizen's petition for an Environmental Assessment Worksheet and Environmental Impact Statement for the Freeborn Wind Farm. The EQB designated the Commission appropriate governmental unit to make the decision on the need for an EAW. Pursuant to the requirements of Minn. R. 4410.1100, subp. 5, the petition was transmitted to the Commission for a determination of the need for an EAW.
4. Pursuant to Minn. R. 4410.1100, subp. 1, any person may request the preparation of an EAW on a project by filing a petition that contains the signatures and mailing addresses of at least 1000 individuals who reside or own property in the state. The Commission finds that the EAW petition is deficient in that it did not include the signatures and

¹ *Order Issuing Site Permit and Taking Other Action*, Commission Docket 17-410, e-Dockets Filing [201812-148595-01](#), December 19, 2018.

² *Order Amending Site Permit*, e-Dockets Filing [20195-152849-01](#), May 10, 2019.

³ *Order Granting Request to Transfer Site and Route Permits*, e-Dockets, Filing [201910-156806-02](#), October 22, 2019.

⁴ *Order Continuing Proceedings, Tolling Deadline and Soliciting Comments*, e-Dockets Filing [20192-150651-01](#), February 26, 2019.

⁵ e-Dockets Filings [20195-153253-01](#) and [20195-153242-01](#), May 30, 2019.

⁶ *Filings of Appeal of 5-10-19 Order Amending Permit 7-2-19 Denial of Reconsideration*, e-Dockets Filing [20198-154879-01](#), August 1, 2019.

Attachment B

mailing addresses of at least 100 individuals who reside or own property in the state as required by Minnesota Rule 4410.1100.

5. Pursuant to Minn. R. 4410.1100, subp. 2(E) requires that the petition include material evidence indicating that, because of the nature or location of the proposed project, there may be potential for significant environmental effects. The material evidence must physically accompany the petition. It is not sufficient to merely provide a reference or citation to where the evidence may be found.
6. EQB staff provided Commission counsel a file transfer protocol (FTP) [address](#) where the petition could be located. Commission staff parsed the files into smaller sizes and entered them in its electronic filing system Docket Number [17-410](#).
7. The Commission finds that the circumstances set forth in the EAW petition do not make it exempt from an EAW determination under Minnesota Rules 4410.4600.
8. A determination that must be made with respect to an EAW petition is whether the petition determines that the subject project is a Mandatory EAW category under EQB rule. The Commission determines that the project is included in EQB's list of Mandatory EAW category projects in Minnesota Rule 4410.4300, Subpart 3 (Electrical Generating Facilities). Under this rule, environmental review shall be conducted according to Minnesota Rules parts 7849.100 to 7849.2100 and 7850.1000 to 7850.5600.
9. The Commission's electronically docketed record (e-Docket 17-410) in this proceeding demonstrate that the Project was selected through a Commission-approved bidding process⁷. Therefore, under Minn. Stat. § 216B.2422 subd. 5, it is exempt from the Certificate of Need requirements including those of Minnesota Rules, parts 7849.100 to 7849.2100.
10. The Commission's December 19, 2018 *Order Issuing Site Permit and Taking Other Action* notes that Wind energy projects are governed by Minn. Stat. Ch. 216F and Minn. R. Ch. 7854. Minn. Stat. § 216F.01, subd. 2, defines a large wind energy conversion system (LWECS, or wind farm) as a combination of wind energy conversion systems with a combined nameplate capacity of five MW or more.
11. On December 19, 2019, the Commission met to consider a permit amendment request for the project that would provide for a different turbine model and updated project layout. The Commission has not issued its order on the requested permit amendment

⁷ See *ALJ Report Finding of Fact 70*

Attachment B

decision because it is prohibited from doing so under Minnesota Rule 4410.3100, subparts 1 and 2.

12. Minn. Stat. § 216F.02 provides that siting of LWECS provides an exemption from the requirements of the Minnesota Power Plant Siting Act (Minnesota Statutes Chapter 216E) for development of an Environmental Impact Statement or Environmental Assessment of the project. However, Minn. Stat. § 216F.02 incorporates by reference required considerations in designating sites and routes contained in Minn. Stat. § 216E.03, Subdivision 7 including:

- Evaluation of research and investigations relating to the effects on land, water, and air resources of large electric power generating plants and the effects of water and air discharges and electric and magnetic fields resulting from such facilities on public health and welfare, vegetation, animals, materials, and aesthetic values.
- Environmental evaluation of sites proposed for future development and expansion and their relationship to the land, water, air, and human resources of the state.
- Evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects.
- Evaluation of the potential for beneficial uses of waste energy from proposed large electric power generating plants.
- Analysis of the direct and indirect economic impact of proposed sites including, but not limited to, productive agricultural land lost or impaired.
- Evaluation of adverse direct and indirect environmental effects that cannot be avoided should the proposed site be accepted.
- Evaluation of alternatives to the applicant's proposed site.
- Evaluation of governmental survey lines and other natural division lines of agricultural land so as to minimize interference with agricultural operations.
- Evaluation of irreversible and irretrievable commitments of resources should the proposed site be approved.
- Consideration of problems raised by other state and federal agencies and local entities, when appropriate.

Attachment B

13. Minn. Stat. § 216F.03 requires that an LWECS be sited in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources. The Environmental Quality Board endorsed a statement of need and reasonableness for administrative rules to facilitate the review of proposed with farm projects as Minnesota Rule chapter 4401 on September 20, 2001.⁸ Minnesota Rules chapter 7854 includes provisions under part 7854.0500, Subpart 7 requiring permit applicants to include an analysis of the project's potential consequences, proposed mitigation measures, and any environmental harms that cannot be avoided, with respect to the following categories:

- 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;

⁸ *Minnesota Rules Chapter 4401 Statement of Need and Reasonableness* (2001), Exhibit V of e-Dockets Filing [20201-159161-07](#), January 15, 2020. Chapter 4401 was subsequently renumbered as Chapter 7836 and again as Chapter 7854.

Attachment B

- P. vegetation;
- Q. wildlife; and
- R. rare and unique natural resources.

14. The 2001 SONAR stated that an EAW or EIS is not required for review of LWECS site permits: “... ***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***”⁹ (emphasis added).

15. Minnesota Rule 7854.0500, Subpart 7 also provides that “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**” (emphasis added).

16. Notwithstanding the items above demonstrating that an EAW or EIS is not required for LWECS siting, the Commission determines that the totality of Commission Docket 17-410, including environmental impact information in the application and subsequent filings, materials presented at public information meetings, testimony and cross form a contested case proceeding, an Administration Law Judge Report, compliance filings and others comprise a comprehensive evaluation of potential impacts and mitigation substantially equivalent to, or more granular than would be provided in an EAW, despite their procedural differences.

17. Notwithstanding the findings above finding the petition deficient, the Commission finds that the petition does not provide sufficient material evidence demonstrating the potential for significant environmental effects meeting the standard for development of an EAW or EIS.

⁹ *Ibid* at pages 19-20.

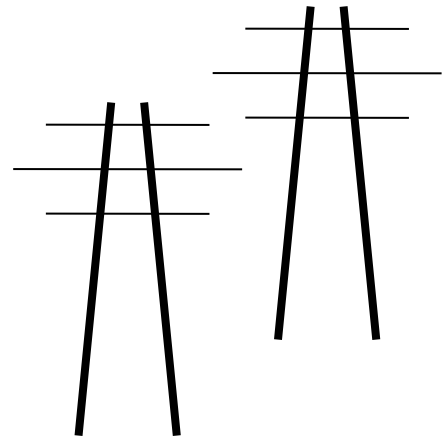
Attachment F

**AFCL Letter to PUC re: False Statements in Staff Briefing Papers
January 28, 2020**

Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
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1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



January 28, 2020

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

via email: ryan.barlow@state.mn.us
and eDockets

RE: False statement about Petition Signatures and issues in Staff Briefing Papers
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 Mr. Barlow:

In reviewing the staff Briefing Papers, I note the statement that Association of Freeborn County Landowners did not submit at least 100 signatures of residents/landowners with our Petition:

EAW Petition Deficiency

Staff notes that AFCL's petition as filed with the EQB is deficient as it does not appear to satisfy the requirements of Minnesota Rule 4410.1100, Subpart 1 in that the petition did not include the signatures and mailing addresses of at least 100 individuals who reside or own property in the state. The Commission may elect to dismiss the petition on that basis. Staff will continue its analysis to examine procedural and substantive items for the Commission's consideration.

First, our Petition for Environmental Assessment Worksheet had far more than 100 signatures, 97 pages of signatures plus a cover sheet. The full Petition, signature pages, and all exhibits were provided to the Commission in a zip file, with the request to notify the EQB when all had been downloaded. It is on the Commission to download the files, and to notify the EQB when downloaded or if there were any issues with any files. The assertion that AFCL did not have signatures of "at least 100 individuals who reside or own property in the state" is absurd and

grossly offensive. Please count them.¹ I am filing them in eDockets, though it's not credible that the PUC did not receive these pages. See also Attachments 1, 2 and 3 regarding EQB receipt and transmittal, and PUC receipt of the Petition, signatures, and attachments.

Secondly, regarding the above statement, the EQB found the AFCL Petition for Environmental Assessment Worksheet sufficient, both in number of signatures and in content, and forwarded it to the Commission as the Responsible Governmental Unit (RGU). See process as provided by Minn. R. 4410.1100. This is not a determination for the Commission to make, it is the job of the Environmental Quality Board. Minn. R. 4410.1100, Subp. 5. The EQB received the Petition, signatures and exhibits. The EQB has determined that the AFCL Petition for EAW did comply with Minn. R. 4410.1100, Subp. 1, that AFCL had provided sufficient names and addresses of Minnesota residents and landowners, and that AFCL had provided sufficient content as required by Minn. R. 4410.1100, Subp. 2, A-E. That's done. The sufficiency of the Petition for EAW is not an issue or decision for the Commission, it's been deemed sufficient by the EQB.

Staff takes issue with the matter of filing, noting that the Petition had not been filed on the Commission's eDockets system. Briefing Papers, p. 6; RoD para. 5. The EQB is a separate agency with its own requirements and standards and process for EAW petitions, which were

¹ See attached emails from EQB and PUC and signature pages filed with EQB. The Petition was filed with EQB and then transmitted by the EQB, as required by EQB rules, and PUC staff acknowledges receipt of Petition. Minn. R. 4410.1100; RoD, p. 1, #3. Looking at eDockets, I see that staff did not eFile the 97 signature pages and cover sheet. This transmittal is an EQB process, and there is no requirement that AFCL provide copies or file with eDockets, only that project proposers be notified – PUC notice and filing is accomplished by the EQB in its transmittal letter. Procedurally, Petitioners are to file a Petition for EAW with the EQB and the project proposers, in this case, counsel for Xcel Energy, and then EQB determines the RGU, in this case, the PUC. I also elected to send a complimentary copy, not required, to Ryan Barlow, PUC General Counsel, and Linda Jensen, Commerce Asst. A.G., but had repeated problems with their emails bouncing due to their lower server size limits than the EQB. My own server would only allow one large email per hour. Sending began at 11:28 p.m., January 1, 2020, with emails sent through the night. At 10:23 a.m. January 2, 2020, I emailed Ryan Barlow and Linda Jensen to let them know that I'd finish sending the EQB documents and would then send them the balance. At 11:14 a.m., January 2, 2020, Katrina Hapka, EQB, confirmed receipt of the Petition for EAW, the 98 page signature attachment including 1 page cover sheet, and most other Exhibits, but not all. Attachment 1. Due to PUC server limits, most of the complimentary filings to the PUC and Commerce continued to bounce, and at 11:26 I sent a link to Ryan Barlow, PUC and others of my Legalectric post, [Petition for EAW – Freeborn Wind](#) including the Petition and signature pages, and all exhibits to the parties, to help determine what if anything, had not been received. At 12:40 p.m., January 2, 2020, I received verification from Katrina Hapka, EQB, that all the attachments had been received, and then I completed sending several bounced exhibits to Xcel counsel. At 3:29 p.m., I started resending the entire set beginning again with the Petition narrative and the signature pages, to Ryan Barlow, PUC, and Commerce A.G. Linda Jensen, with notice to them that EQB had received all documents, and also sent a link to my Legalectric post. At approximately 4:30 p.m., I had a conversation with Linda Jensen, and we determined that the most efficient way to get the documents to her was to use the Legalectric posting, and I memorialized this agreement in an email at 4:35 p.m., and asked Ryan Barlow if that would work for him, again linking each of the documents as well as the site's page link. At 12:14 on January 3, 2020, Katrina Hapka, EQB, sent Bret Eknes, PUC, the RGU Transmittal Letter, together with a link with all the filings, and a request to **“Please send a confirmation email once you have downloaded the files from the ftp site.”** Attachment 2. At 3:32 p.m. on January 3, 2020, I received an email from Ryan Barlow, PUC General Counsel, stating, “Ms. Overland, we have arranged to get a copy of your petition directly from the EQB.” Attachment 3. No further emails regarding the EAW Petition were received until the Request for Extension in Time – EAW Decision and granting of that request on January 21, 2020. PUC's Ryan Barlow, speaking as the Commission's General Counsel, stated agreement for receipt of the Petition. Ryan Barlow, PUC, and Linda Jensen, Asst. A.G., Commerce-EERA will have copies of these emails.

followed, and the Petition was deemed sufficient by the EQB. The EQB then transmitted the Petition to the EQB electronically. PUC Counsel agreed to receipt of the Petition via the EQB provided link. Attachment 3. The EQB did request confirmation from the PUC upon downloading. I've seen no reports of any difficulties downloading, and I've not had any inquiry regarding any supposedly missing signature pages which were received by the EQB, receipt I have confirmation from the EQB at 12:40 p.m. January 2, 2020, and enough signatures were received for EQB to have deemed the Petition sufficient. The rule clause requiring actual documents, not a reference or citation, governs the Petition to the EQB, and has no bearing on the EQB transmittal to the Commission. Minn. R. 4410, Subp. 2(e). The process here is similar to the Office of Legislative Auditor's investigation of the Commission and public engagement – it is under the jurisdiction of a separate state entity and not a matter to be filed on eDockets, instead a matter to be handled in the manner provided for in that entity's rules and policies.

Another issue is found regarding “Finality of Commission’s Previous Decisions,” noting that “second petitions for reconsiderations by the same grounds that have been previously considered and denied and are not permitted.” Briefing Papers, p. 6. This is not a “Reconsideration” request, it is not a second Reconsideration petition, and there has been no “first” Reconsideration request for the Xcel amendment. This is a Petition for EAW made to the Environmental Quality Board. Recall that on December 19, 2019, the Commission considered AFCL’s request to the Commission for environmental review, a request similar to ones made before by AFCL, and one made by Honor the Earth regarding the Nemadji Trail Energy Center (Petition for MEPA review [20186-144412-01](#), PUC Docket E-015/AI-17-568).² Also as with Honor the Earth’s request to the Commission for environmental review, the Commission denied AFCL’s request at its meeting of December 19, 2019. Similarly, after denial by the Commission of an environmental review request to the Commission, AFCL then filed a Petition for EAW with the Environmental Quality Board, a separate entity with jurisdiction over environmental review. The EQB found, as it did with Honor the Earth’s Petition, that AFCL’s Petition for EAW was sufficient, that enough signatures had been provided (Minn. R. 4410.1100, Subp. 1) and that sufficient information had been provided, including “a brief description of the potential environmental effects which may result from the project; and “material evidence indicating that, because of the nature or location of the proposed project, there may be potential for significant environmental effects. The material evidence must physically accompany the petition.” Minn. R. 4410.1100, Subp. 2.³ Staff noted receipt of over 1,500 pages of material evidence accompanying the Petition to the EQB.⁴

Staff also makes another problematic statement in the Briefing Papers, saying:

² Staff Briefing Papers in that docket stated that: “The EAW is distributed with public notice of its availability for review and comment. The comment period is 30 calendar days. Certain state, federal, and local agencies always receive EAWs for review. Any person may review and comment in writing on an EAW. A public meeting to receive oral comments is optional at the discretion of the RGU, but is not commonly held.”

³ The rule also notes that “It is not sufficient to merely provide a reference or citation to where the evidence may be found.” This is the rule governing the material evidence necessary for a Petition for EAW to the EQB, and staff appears to incorrectly conflate this rule as applicable to the EQB’s transmittal to the Commission.

⁴ Staff claims that exhibits B and K were not included – the EQB requested confirmation of downloading all the links. Apparently the EQB was not contacted regarding the “missing” exhibits, or erroneously confirmed that all had been received, or did not confirm receipt as requested by the EQB.

A plain reading of the statutes and rules provided in Section II above demonstrates that the Minnesota Legislature considered and rejected establishing a requirement for preparation of EISs for LWECS site permit application.

Briefing Papers, p. 7 (emphasis added). Staff may assert that the Exemptions of Min. Stat. §216F.02 was intended to exempt wind from environmental review, but environmental review was specifically intended to be addressed in another section of that contemporaneous session law, now Minn. Stat. §216F.05. The legislature instructed that rules be developed to address **“criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment,”** which has NOT been done, and to address **“requirements for environmental review of the LWECS,”** which also has NOT been done. Instead, environmental review was circumvented. See AFCL Petition for EAW, Exhibit V, SONAR September 20, 2001. Granted that rulemaking was nearly 20 years ago, and the Commission inherited those rules with 2005 legislative transfer of siting authority, but since that time, two wind rulemaking petitions have been filed with the Commission and have been denied.

The rule that uses the words “environmental review” doesn’t establish criteria or requirements, and instead states the opposite, inferring that an application is environmental review:

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. 8. Staff assumes that the proposed ROD paragraph 13, the 2001 SONAR and Minn. R. 7854.0700, and Minn. R. ch. 7854 generally are compliant with the Minnesota Environmental Policy Act, despite failure by the EQB and since the 2005 transfer of siting authority, the Commission, to promulgate rules addressing “criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment” and “requirements for environmental review of the LWECS,” as mandated by the legislature circa 1995. Minn. Stat. §216F.05(1),(4). Staff also presumes that siting using Minn. Stat. §216E.03, Subd. 7, is sufficient to be MEPA compliant, but under the PPSA, projects require a full Environmental Impact Statement. Minn. Stat. §216E.03, Subd. 5. Siting wind using the PPSA criteria found in Minn. Stat. §216E.03, Subd. 7 is not a substitute for the Environmental Impact Statement required under Minn. Stat. §216E.03, Subd. 5.

It is AFCL’s position that this that circumvention of environmental review, the blanket exemption of Minn. Stat. §216F.02, and the failure to promulgate rules regarding siting criteria and environmental review as mandated by Minn. Stat. §216F.05, does not comply with the Minnesota Environmental Policy Act, that an Environmental Impact Statement is necessary, and that an EAW must be prepared as a step in the determination of the necessity of an EIS.

Staff Briefing Papers regard the evaluation of whether an EAW is necessary using Minn. R. 4410.1700, Subp. 7 as “an additional analysis.” Staff Briefing Papers, p. 8. This is a misguided notion. It is the EQB’s required analysis, not “an additional analysis,” for consideration and

determination of need for an EAW. The EQB has jurisdiction over Petitions for EAW and determination of the RGU which must make the decision.

At this point, the Commission's sole task is that set forth in Minn. R. 4410.1100, Subp. 6:

The RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. In considering the evidence, the RGU must take into account the factors listed in part [4410.1700](#), subpart 7. The RGU shall maintain, either as a separate document or contained within the records of the RGU, a record, including specific findings of fact, of its decision on the need for an EAW.

I recognize that the Commission does not often deal with Petitions for Environmental Review filed through the Environmental Quality Board, and likely is not familiar with the process. I believe the last one filed with the Commission was in MP's EnergyForward docket, for environmental review regarding the Nemadji Trail Energy Center, and I cannot recall any other. See *In the Matter of Minnesota Power's Petition for Approval of the EnergyForward Resource Package*, PUC Docket E-015/AI-17-568. This docket was remanded to the Commission because "[t]he commission erred by denying the EAW petition and approving the affiliated-interest agreements without substantively addressing the criteria that govern whether an EAW is necessary.⁵ Regarding environmental review, see also *In re Applications of Enbridge Energy, Limited Partnership, for a Certificate of Need and a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*.⁶ See also *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*; *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota*, PUC Dockets PL-6668/CN-13-473, PL-6668/PPL-13-474.⁷ The Commission's perspective on environmental review has repeatedly been found by the courts to be too narrow and not compliant with MEPA.

Material and significant issues have been raised throughout the Freeborn Wind project docket by AFCL and the public, and even the applicant, most recently in the reams of new information provided by Xcel Energy in its amendment request, including but not limited to a change in site plan and larger turbines, shadow flicker impacts, and provision of new noise modeling using 0.5 ground factor after Administrative Law Judge recommended permit be denied where applicant had not demonstrated that it would comply with noise standards. The information provided by Xcel Energy has been shuffled off into a private "pre-construction meeting" process, with no public review and comment and no public hearing, despite the Commission's commitment to a public process with Findings 243 and 244 in the initial "Final Permit" Order of December 19,

⁵ <https://mn.gov/law-library-stat/archive/ctappub/2019/OPa190688-122319.pdf>

⁶ <https://mn.gov/law-library-stat/archive/ctappub/2019/OPa181283-060319.pdf>

⁷ <https://mn.gov/law-library-stat/archive/ctappub/2015/opa150016-091415.pdf>

2018. The private nature of these reports and filings, the failure of the Commission to grant a contested case or public hearing for the Xcel permit amendment proceeding, the overt exclusion of AFCL from the first pre-construction meeting, the apparent intent to exclude AFCL from other pre-construction meetings, and failure of Commerce-EERA to produce documents including EERA claim emails are deleted after 90 days is anything but transparent or compliant with the Commission's "broad spectrum public participation" required by statute. Minn. Stat. §216E.08, Subd. 2. The Power Plant Siting Act is environmental law in Minnesota, and this is another example of the Commission's failure to comply with MEPA.

In the draft "Record of Decision," staff claims in paragraph 16 that "the totality of Commission Docket 17-410" ... "comprise a comprehensive evaluation of potential impacts and mitigation substantially equivalent to, or more granular than would be provided in an EAW, despite their procedural differences." The Xcel Energy amendment application and information provided by Xcel in "compliance filings" have not been subjected to a contested case hearing or public hearing, and the reams of documents filed in November, just before public comments were due, have not been adequately vetted. Paragraph 16 flies in the face of the process of Xcel Energy's acquisition circumventing Certificate of Need environmental review (PUC Docket M-16-777) and the application for amendment – there has been no comprehensive evaluation of potential impacts and mitigation of those impacts for the project as proposed by Xcel Energy.

The recent Xcel Energy filings reveal that the noise study was modeled using the improper ground factor of 0.5, which results in modeling significantly understating the noise the project would generate. The shadow flicker shows that many homes will receive more than 30 hours annually of shadow flicker (and under what rule or standard is the 30 hours annually set as the acceptable level of shadow flicker?). The turbines proposed are larger turbines and there is no certainty of adequate setbacks (and under what rule or standard is any setback determined?). The maps provided are so vague that Commerce had to ask for better maps in the pre-construction meeting. It's impossible to identify potential impacts with the maps as they are.

At the very least, the Freeborn Wind project requires an Environmental Assessment Worksheet, the process of which includes a public comment period and hearing,⁸ and then a decision by the Commission, based on the public hearing and comments, as to whether an EIS is necessary. This is the purpose of an Environmental Assessment Worksheet process. And yes, it is AFCL's position that this project has sufficient impacts to warrant a full iterative EIS.

In addition to the recent cases remanded to the Commission for environmental review, there are statements in the Staff Briefing Papers and many documents filed in this and other wind dockets, that show the Commission has little regard for the Minnesota Environmental Policy Act, and for the people of Minnesota who would have to live with the substantial impacts of this project in particular. The people have spoken loudly, frequently, and with sufficient detail for the Commission to recognize that there are significant human and environmental impacts.

The Commission has a decision to make regarding environmental review. Minn. R. 4410.1100,

⁸ A public meeting has been held in every one of the many EAW Petitions and comment periods I've participated in over the last 25 years. Whether to hold a public meeting is at the RGU discretion, but these public meetings are anything but rare. Minn. R. 4410.1600(C).

Subp. 6. The sufficiency of AFCL's Petition for EAW is not at issue, it's been determined adequate by the Environmental Quality Board.

At this time, AFCL requests immediate correction of the false statements regarding the adequacy of the Petition for EAW, the "missing" 97 signature pages, the "missing" Exhibits B and K, and the improper framing the issue before the Commission as anything other than a decision regarding an EAW under the criteria of Minn. R. 4410.1700, Subp. 7, and a statement of clarification at the meeting, so that the Commissioners will not have misleading information before them as they make their decision regarding environmental review and this Petition for an EAW.

At this time, AFCL also requests oral argument before the Commission at the February 6, 2020 meeting regarding our Petition for an Environmental Assessment Worksheet.

Very truly yours



Carol A. Overland
Attorney at Law

cc: All parties via eDockets
Association of Freeborn County Landowners
Katrina Hapka, Denise Wilson, Environmental Quality Board

Enclosures: Certification of Overland and Attachments 1, 2, 3, and 4

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben
Valerie Means
Matt Schuerger
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Northern
States Power Company for the 84 MW
Freeborn Wind Farm in Freeborn County

PUC Docket No. IP-6946/TL-17-410

CERTIFICATION OF CAROL A. OVERLAND
ATTACHMENTS 1, 2 AND 3 TO LETTER OF JANUARY 28, 2020

Carol A. Overland, attorney for Association of Freeborn County Landowners, certifies, and in compliance with Minn. R. 7829.0250, states as follows:

1. I am an attorney in good standing, licensed in the State of Minnesota, Lic. No. 254617, and have extensive experience in utility regulatory proceedings in many venues.
2. I am representing the Association of Freeborn County Landowners in the above-captioned proceeding and the associated transmission docket.
3. I am filing in eDockets a copy of the 98 page Petition for EAW Signatures packet, including a one page cover sheet. This was received by the EQB and counsel for Xcel Energy by email dated January 1, 2020.

4. Attached as Attachment 1 is a true and correct copy of an email dated January 2, 2020 at 11:14 a.m. from Katrina Hapke, Environmental Review Planner, Environmental Quality Board, stating that she had received some of the EAW Petition documents, itemizing them, including that she had received the Petition signature pages.
5. Attached as Attachment 2 is a true and correct copy of an email dated January 2, 2020, at 12:40 p.m., again from Katrina Hapke, stating that she had received all of the Petition for EAW documents.
6. Attached as Attachment 3 is a true and correct copy of a Transmittal Letter email dated January 3, 2020, at 12:13 p.m., again from EQB's Katrina Hapke, to Bret Eknes, Public Utilities Commission, providing a link to the full AFCL Petition for EAW and with a letter attached outlining the EAW Petition process for the Commission going forward.
7. Attached as Attachment 4 is a true and correct copy of an email dated January 3, 2020 at 3:32 p.m. from Ryan Barlow, PUC General Counsel and Acting Executive Secretary stating that "Ms. Overland, we have arranged to get a copy of your petition directly from the EQB."

Dated: January 28th, 2020



Carol A. Overland MN Lic. 254617
Attorney for Association of Freeborn
County Landowners
Legalelectric
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

Subject: RE: #9 of 10 EAW Petition - Freeborn Wind
From: "Env Review (EQB)" <Env.Review@state.mn.us>
Date: 1/2/2020, 11:14 AM
To: "overland@legalelectric.org" <overland@legalelectric.org>
CC: "Env Review (EQB)" <Env.Review@state.mn.us>

Good Morning Ms. Overland,

We have received the following attachments.

Petition for EAW
Petition for EAW Signatures
Exhibit ToC A-D
Exhibits E-1, E-3, E-4, E-5, E-6a
Exhibit F-H
Exhibit I-W

We appear to be missing Exhibit E-2 and Exhibit E-6b. I will send a confirmation email when all attachments have been received.

Thank you.

Katrina Hapka
Environmental Review Planner
Minnesota Environmental Quality Board
520 Lafayette Road
St. Paul, MN, 55155
O: 651-757-2418
eqb.state.mn.us

NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

-----Original Message-----

From: Carol A. Overland <overland@legalelectric.org>
Sent: Thursday, January 2, 2020 10:15 AM
To: Wilson, Denise (EQB) <denise.wilson@state.mn.us>; Seuffert, Will (EQB) <will.seuffert@state.mn.us>; cbrusven@fredlaw.com; lagrimonti@fredlaw.com
Subject: Re: #9 of 10 EAW Petition - Freeborn Wind

#9of 10 (had to break Exhibit E-6 down again into E-6a and E-6b)

Second to last one, almost done

On 1/2/2020 10:03 AM, Carol A. Overland wrote:

#9 of 9

Subject: RE: #9 of 10 EAW Petition - Freeborn Wind
From: "Env Review (EQB)" <Env.Review@state.mn.us>
Date: 1/2/2020, 12:40 PM
To: "Carol A. Overland" <overland@legalelectric.org>, "Env Review (EQB)" <Env.Review@state.mn.us>

Hi Ms. Overland,

We have now received all attachments.

Thank you.

Katrina Hapka
Environmental Review Planner

Minnesota Environmental Quality Board

520 Lafayette Road
St. Paul, MN, 55155
O: 651-757-2418
eqb.state.mn.us



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

From: Carol A. Overland <overland@legalelectric.org>
Sent: Thursday, January 2, 2020 11:30 AM
To: Env Review (EQB) <Env.Review@state.mn.us>
Subject: Re: #9 of 10 EAW Petition - Freeborn Wind

Thanks - Christi Brusven is also missing #5, E-2. I have it sent at 4:37a, zzzzzzzzzzzzzzzz, will resend that one next. 6b just sent.

I just put it up on Legalelectric, just sent an email out on that:

Petition for EAW – Freeborn Wind

January 2nd, 2020

Subject: Petition for EAW

From: "Env Review (EQB)" <Env.Review@state.mn.us>

Date: 1/3/2020, 12:14 PM

To: "Eknes, Bret (PUC)" <bret.eknes@state.mn.us>

CC: "Env Review (EQB)" <Env.Review@state.mn.us>, "Seuffert, Will (EQB)" <will.seuffert@state.mn.us>, "Carol A. Overland" <overland@legalelectric.org>, "CBrusven@fredlaw.com" <CBrusven@fredlaw.com>, "LAgrimonti@fredlaw.com" <LAgrimonti@fredlaw.com>, "Kirsch, Raymond (COMM)" <raymond.kirsch@state.mn.us>

Dear Mr. Eknes,

The Environmental Quality Board (EQB) has received a petition requesting that an Environmental Assessment Worksheet (EAW) be prepared for Freeborn Wind, and has determined the Minnesota Public Utilities Commission is the appropriate governmental unit to decide the need for an EAW.

You will find the petition as submitted to the EQB, listed as "FreebornWind.zip" on the ftp site (<ftp://files.pca.state.mn.us/pub/tmp>). A letter ("RGU Transmittal Letter_Freeborn Wind_PUC.pdf") is attached with information on how to proceed with the petition according to Minnesota Rules 4410. Please send a confirmation email once you have downloaded the files from the ftp site.

If you need additional information, please contact us at 651-757-2873 or at env.review@state.mn.us.

Regards,

Program Staff

Environmental Review Program

Minnesota Environmental Quality Board

520 Lafayette Road

St. Paul, MN, 55155

O: 651-757-2793

eqb.state.mn.us



NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you.

— Attachments: —

RGU Transmittal Letter_Freeborn Wind_PUC.pdf

688 KB

**Minnesota Environmental Quality Board
520 Lafayette Road North
Saint Paul, MN 55155**

VIA E-MAIL (cover letter & petition)

January 3, 2020

Bret Eknes
Energy Facilities Supervisor
Minnesota Public Utilities Commission

RE: Petition for an Environmental Assessment Worksheet for Freeborn Wind

Dear Mr. Eknes,

The Environmental Quality Board (EQB) has received a petition requesting that an Environmental Assessment Worksheet (EAW) be prepared for the project described in the petition, and has determined that the Minnesota Public Utilities Commission is the appropriate governmental unit to decide the need for an EAW.

The requirements for environmental review, including the preparation of an EAW, can be found in Minnesota Rules, chapter 4410. The procedures to be followed in making the EAW decision are set forth in part 4410.1100. Key points in the procedures include:

1. No final governmental approvals may be given to the project named in the petition, nor may construction on the project be started until the need for an EAW has been determined. Project construction includes any activities which directly affect the environment, including preparation of land. If the decision is to prepare an EAW, final governmental approval must be withheld until either a negative declaration on the need for an Environmental Impact Statement (EIS) is issued or an EIS is determined adequate. See part 4410.3100, subparts 1 and 2 for the prohibitions on final governmental decisions.
2. To make the decision on the need for an EAW, compare the project to the mandatory EAW, EIS, and exemption categories listed in parts 4410.4300, 4410.4400, and 4410.4600, respectively. If the project should fall under any of these categories, environmental review is automatically required or prohibited. If this should be the case, proceed accordingly:
 - a. If the project meets or exceeds the thresholds of any mandatory EAW or EIS category, then environmental review is required for the project. Please see the guidance documents on the [EQB website](#) for preparing an EAW or EIS.
 - b. If the project is exempt from environmental review, please document the reason for the exemption in writing and notify both the petitioners' representative and EQB of your conclusion.
3. If preparation of an EAW is neither mandatory nor exempted, the Minnesota Public Utilities Commission has the option to prepare a discretionary EAW in accordance with part 4410.1000, subpart 3, item B. The standard for making the decision on the need for an EAW is provided in part 4410.1100, subpart 6. When considering the evidence provided by the petitioners,

Mr. Eknes
January 3, 2020

proposers, or other persons, the Minnesota Public Utilities Commission must take into account the factors listed in part 4410.1700, subpart 7. Note that this requires that a record of decision, including specific findings of fact, be maintained.

4. You are allowed up to 30 working days (Saturdays, Sundays and holidays do not count) for your decision if it will be made by a council, board, or other body which meets only periodically, or 15 working days if the decision will be made by a single individual. If the decision will be made by an individual, the individual may request an additional 15 working days from the EQB in accordance with part 4410.1100, subpart 7.
5. You must provide written notification of your decision to the proposer, the petitioners' representative, and the EQB, within 5 working days as described in part 4410.1100, subpart 8. Please provide written notification to these parties even in cases where an EAW or EIS will be prepared according to part 4410.1000, subparts 2 or 3, or the project is found to be exempt from environmental review.
 - a. To notify the EQB of your decision on the need for an EAW, complete the [EQB Monitor submission form](#) found on the EQB website. The EQB requests that you upload a copy of your record of decision using the same electronic submission form, including instances where environmental review is mandatory, voluntary, or exempt.
6. If for any reason you are unable to act on the petition at this time (e.g., no application has yet been filed or the application has been withdrawn or denied), the petition will remain in effect for a period of one year, and must be acted upon prior to any final decision concerning the project identified in the petition. It is recommended that you notify in writing both the petitioners' representative and the EQB if you are unable to act on the petition at the time it is received.

Notice of the petition and its assignment to your unit of government will be published in the EQB *Monitor* on January 6, 2020.

If you have any questions or need any assistance, please do not hesitate to call me. The telephone number is 651-757-2873.

Sincerely,

Katrina Hapka

Katrina Hapka
Environmental Review Planner
Environmental Quality Board

Enclosure

cc:

Carol Overland, Petitioner's Representative
Christina Brusven, Project Proposer's Representative
Lisa Agrimonti, Project Proposer's Representative
Will Seuffert, EQB Executive Director

Subject: RE: emailing AFCL Petition for EAW - Freeborn Wind
From: "Barlow, Ryan (PUC)" <ryan.barlow@state.mn.us>
Date: 1/3/2020, 3:32 PM
To: "Carol A. Overland" <overland@legalelectric.org>, "Jensen, Linda S" <Linda.S.Jensen@ag.state.mn.us>
CC: "Dobson, Ian" <Ian.Dobson@ag.state.mn.us>, "Eknes, Bret (PUC)" <bret.eknes@state.mn.us>

Ms. Overland, we have arranged to get a copy of your petition directly from the EQB.

Ryan Barlow
Acting Executive Secretary, General Counsel
Pronouns: He/Him/His

Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101
(651) 201-2216
Ryan.Barlow@state.mn.us



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From: Carol A. Overland <overland@legalelectric.org>
Sent: Thursday, January 02, 2020 4:35 PM
To: Jensen, Linda S <Linda.S.Jensen@ag.state.mn.us>; Barlow, Ryan (PUC) <ryan.barlow@state.mn.us>
Subject: emailing AFCL Petition for EAW - Freeborn Wind

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

Linda and Ryan -

Linda, this is to memorialize our phone call a few minutes ago and agreement that the most efficient way to make sure you get a complimentary copy of the EAW Petition (only EQB and Xcel are required to be served, Minn. R. 4410.1100, Subp. 3 and 4) is to use my Legalelectric post. The emails that I was able to send, and which were received by EQB and Brusven/Agrimonti at Fredlaw are too large to get in to your state server.

Ryan, my emails to you with these may not be getting through either. Does this solution work for you?

The Petition, Petition signatures, and Exhibits A-W are at this URL:

[Petition for EAW – Freeborn Wind](#)

January 2nd, 2020

Here are the direct links:

[PETITION FOR EAWDownload](#)

[PETITION FOR EAW_SignaturesDownload](#)

[Exhibits Table of Contents, Exhibits A-D Download](#)

[Exhibit E-1 Download](#)

[Exhibit E-2 Download](#)

[Exhibit E-3 Download](#)

[Exhibit E-4 Download](#)

[Exhibit E-5 Download](#)

[Exhibit E-6a Download](#)

[Exhibit E-6b Download](#)

[Exhibits F-H Download](#)

[Exhibit I-W Download](#)

Please let me know if you have any issues downloading, or if you'd like me to get these to you some other way.

Carol, for AFCL

--

"Our lives begin to end the day we become silent
about the things that matter." Dr. Martin Luther King, Jr.

Carol A. Overland
Attorney at Law
Legalelectric - Overland Law Office
1110 West Avenue
Red Wing, MN 55066
612-227-8638

overland@legalelectric.org

www.legalelectric.org
www.nocapx2020.info
www.not-so-great-northern-transmission-line.org

Attachment G

**Environmental Quality Board Letter of Transmittal to Public Utilities
Commission – January 3, 2020**

Minnesota Environmental Quality Board
520 Lafayette Road North
Saint Paul, MN 55155

VIA E-MAIL (cover letter & petition)

January 3, 2020

Bret Eknes
Energy Facilities Supervisor
Minnesota Public Utilities Commission

RE: Petition for an Environmental Assessment Worksheet for Freeborn Wind

Dear Mr. Eknes,

The Environmental Quality Board (EQB) has received a petition requesting that an Environmental Assessment Worksheet (EAW) be prepared for the project described in the petition, and has determined that the Minnesota Public Utilities Commission is the appropriate governmental unit to decide the need for an EAW.

The requirements for environmental review, including the preparation of an EAW, can be found in Minnesota Rules, chapter 4410. The procedures to be followed in making the EAW decision are set forth in part 4410.1100. Key points in the procedures include:

1. No final governmental approvals may be given to the project named in the petition, nor may construction on the project be started until the need for an EAW has been determined. Project construction includes any activities which directly affect the environment, including preparation of land. If the decision is to prepare an EAW, final governmental approval must be withheld until either a negative declaration on the need for an Environmental Impact Statement (EIS) is issued or an EIS is determined adequate. See part 4410.3100, subparts 1 and 2 for the prohibitions on final governmental decisions.
2. To make the decision on the need for an EAW, compare the project to the mandatory EAW, EIS, and exemption categories listed in parts 4410.4300, 4410.4400, and 4410.4600, respectively. If the project should fall under any of these categories, environmental review is automatically required or prohibited. If this should be the case, proceed accordingly:
 - a. If the project meets or exceeds the thresholds of any mandatory EAW or EIS category, then environmental review is required for the project. Please see the guidance documents on the [EQB website](#) for preparing an EAW or EIS.
 - b. If the project is exempt from environmental review, please document the reason for the exemption in writing and notify both the petitioners' representative and EQB of your conclusion.
3. If preparation of an EAW is neither mandatory nor exempted, the Minnesota Public Utilities Commission has the option to prepare a discretionary EAW in accordance with part 4410.1000, subpart 3, item B. The standard for making the decision on the need for an EAW is provided in part 4410.1100, subpart 6. When considering the evidence provided by the petitioners,

Mr. Eknes
January 3, 2020

proposers, or other persons, the Minnesota Public Utilities Commission must take into account the factors listed in part 4410.1700, subpart 7. Note that this requires that a record of decision, including specific findings of fact, be maintained.

4. You are allowed up to 30 working days (Saturdays, Sundays and holidays do not count) for your decision if it will be made by a council, board, or other body which meets only periodically, or 15 working days if the decision will be made by a single individual. If the decision will be made by an individual, the individual may request an additional 15 working days from the EQB in accordance with part 4410.1100, subpart 7.
5. You must provide written notification of your decision to the proposer, the petitioners' representative, and the EQB, within 5 working days as described in part 4410.1100, subpart 8. Please provide written notification to these parties even in cases where an EAW or EIS will be prepared according to part 4410.1000, subparts 2 or 3, or the project is found to be exempt from environmental review.
 - a. To notify the EQB of your decision on the need for an EAW, complete the [EQB Monitor submission form](#) found on the EQB website. The EQB requests that you upload a copy of your record of decision using the same electronic submission form, including instances where environmental review is mandatory, voluntary, or exempt.
6. If for any reason you are unable to act on the petition at this time (e.g., no application has yet been filed or the application has been withdrawn or denied), the petition will remain in effect for a period of one year, and must be acted upon prior to any final decision concerning the project identified in the petition. It is recommended that you notify in writing both the petitioners' representative and the EQB if you are unable to act on the petition at the time it is received.

Notice of the petition and its assignment to your unit of government will be published in the EQB *Monitor* on January 6, 2020.

If you have any questions or need any assistance, please do not hesitate to call me. The telephone number is 651-757-2873.

Sincerely,

Katrina Hapka

Katrina Hapka
Environmental Review Planner
Environmental Quality Board

Enclosure

cc:

Carol Overland, Petitioner's Representative
Christina Brusven, Project Proposer's Representative
Lisa Agrimonti, Project Proposer's Representative
Will Seuffert, EQB Executive Director