Attachment E

PUC Staff Briefing Papers for January 6, 2020 Agenda Meeting

MINNESOTA
PUBLIC UTILITIES COMMISSION

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?	
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✓ **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 Act[1] (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 EAW[2] 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 EAW[3].

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 amendment[6], 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 effective 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 Reccomendation: **4 and 5, OR 3, 4 and 5**

July 2013 version

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:	Discretionary:
☐ EIS Scoping	☐ Citizen petition
☐ Mandatory EAW	☐ 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 (¼, ¼, 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:

a. Provide the brief project summary to be published in the *EQB Monitor*, (approximately 50 words).

b. 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.

c. 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)	

d. 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.

e. 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.

f. 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 _____

Attachment B

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

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[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.

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 worth 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 process[7]. 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

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.

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.

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.