

**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**

**RELATOR
ASSOCIATION OF FREEBORN
COUNTY LANDOWNERS
MOTION TO CONSOLIDATE
AND
MOTION FOR STAY PENDING
COMMISSION ORDER AND
RECORD OF DECISION**

Association of Freeborn County
Landowners,

Relator,

vs.

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

Minnesota Public Utilities Commission,

Respondent.

MOTION TO CONSOLIDATE RELATED CASES

Association of Freeborn County Landowners (hereinafter “AFCL”) requests the court consolidate the above-captioned the appeal proceedings with Appellate Court File A19-1195, a related case filed by AFCL on July 30, 2019. An Order to stay that appeal was granted on October 1, 2020, pending the Public Utilities Commission’s order regarding Xcel Energy’s request for amendment site permit application.

Consolidation is appropriate where related cases are before the Court of appeals upon Motion of a party. Minn. R. Civ. App P. 103.02, subd. 3. These appeals also both

arise from decisions of the Public Utilities Commission. While these two related appeals are not directly from the same action, the failure to perform environmental review is an issue in one case, A19-1195, and is the issue in A20-0410. A stay has been ordered in appellate case A19-1195, pending the Final Order of the Public Utilities Commission, and that Final Order may not be issued until the Commission properly addresses the Petition for Environmental Assessment Worksheet, the decision regarding which is the subject of the appeal in case A20-0410. Consolidation would also be in the interests of judicial economy as they cases are so closely intertwined.

Counsel for Respondent Public Utilities Commission and counsel for Applicant Xcel Energy have agreed that they support Relator AFCL's request that the two cases be consolidated.

Association of Freeborn County Landowners requests the court consolidate the above-captioned the A20-0410 appeal proceedings with Appellate Court File A19-1195.

MOTION TO STAY PROCEEDINGS IN ABOVE-CAPTIONED CASE A20-0410

Association of Freeborn County Landowners (hereinafter "AFCL") requests the court stay the appeal proceedings of case A20-0410, an appeal of the Public Utilities Commission's decision regarding AFCL's Petition for Environmental Assessment Worksheet. As stated by AFCL in its Petition for Writ of Certiorari and its Statement of the Case, the Public Utilities Commission has yet to file its Final Order or Record of Decision regarding AFCL's Petition for EAW, despite having met and made its decision orally on February 6, 2020. A transcript has been ordered for that meeting. See

Certificate as to Transcript, executed 3/29/2020. One week after its deliberation and decision on February 6, 2020, Commission staff sent correspondence to the Environmental Quality Board stating it had made its decision and that it “will” file an Order and Record of Decision. Addendum, Attachment B, PUC Letter to EQB. The Order and Record of Decision must include specific Findings of Fact supporting its decision. See Addendum, Attachment G, EQB Letter of Transmittal to PUC; Minn. R. 4410.1100, Subp. 6 (Findings to take into account factors of Minn. R. 4410.1700, Subp. 7). The Order and Record of Decision were not provided to the EQB or the Petitioner, AFCL. The EQB then published a Notice of Decision in the EQB Monitor, despite no Order and Record of Decision. Addendum, Attachment A, EQB Monitor, 2/18/2020. This publication of “notice” opened the 30 day window for appeal of decisions regarding a Petition for EAW under the Minnesota Environmental Policy Act. Minn. Stat §116.04, Subd. 10. An inquiry was sent to the EQB regarding the Commission’s failure to file the Order and Record of Decision, but there was no filing following that missive. Addendum, Attachment C, AFCL letter to EQB 1/28/2020.

AFCL filed its appeal on March 18, 2020, and the parties were served by Certified Mail. However, as of this date, eleven days after filing of the appeal, and nearly two months after the Commission’s agenda meeting at which it denied the AFCL Petition for an EAW, the Public Utilities Commission has yet to file the Order and Record of Decision, which must include specific Findings of Fact supporting its decision. As of this date, the Commission has provided Order, no Record of Decision, and no Findings of Fact to support its decision. The Commission has not offered any indication of when it

might provide the Order and Record of Decision. Although this appeal was timely, the Commission has not made timely provision of the substantive basis for its decision, and an appeal cannot reasonably go forward without that Order and Record of Decision.

At this time, Association of Freeborn County Landowners requests a stay of the proceedings of this appeal, A20-0410, until such time as the Commission has filed its Order and Record of Decision, with requisite Findings of Fact, and that AFCL be afforded 30 days to review and amend the Statement of the Case.

In the alternative, AFCL requests that the Court remand AFCL's Petition for an Environmental Assessment Worksheet to the Commission for a decision regarding AFCL's Petition as required by the Environmental Quality Board's rules, and that the Commission issue a timely Order and Record of Decision.

Association of Freeborn County Landowners requests that the Commission follow the rules of the Environmental Quality Board and the law of the Minnesota Environmental Policy Act.

March 29, 2020



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