

STATE OF MINNESOTA  
IN COURT OF APPEALS

A20-0410

In the Matter of the Application of  
Freeborn Wind Energy, LLC for a Large  
Wind Conversion System Site Permit for  
the 84 MW Freeborn Wind Farm in  
Freeborn County

**MN PUC Docket No IP6946/WS-17-410**  
**OAH Docket No. 80-2500-34633**

**STATEMENT OF THE CASE  
OF RESPONDENT MINNESOTA  
PUBLIC UTILITIES COMMISSION**

Association of Freeborn County  
Landowners,

Relators,

vs.

The Minnesota Public Utilities  
Commission,

Respondent.

For its Statement of the Case, Respondent Minnesota Public Utilities Commission  
("PUC") states as follows:

**I. COURT OR AGENCY OF CASE ORIGATION AND NAME OF JUDGE OR  
HEARING OFFICER WHO PRESIDED:**

This case originated with the PUC. The PUC is currently comprised of the  
following individuals:

|                   |                           |
|-------------------|---------------------------|
| Katie J. Sieben   | Chair                     |
| Matthew Schuerger | Commissioner              |
| John A. Tuma      | Commissioner              |
| Valerie Means     | Commissioner              |
| Joseph Sullivan   | Commissioner <sup>1</sup> |

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<sup>1</sup> Commissioner Sullivan was not a member of the PUC at the time of the decision at issue in this appeal.

## II. JURISDICTIONAL STATEMENT.

### B. Certiorari Appeal.

#### 1. Statute, rule or other authority authorizing certiorari appeal.

Minn. Stat. § 216B.27; Minn. Stat. § 216B.52; Minn. Stat. § 14.63. Relator also cites to Minn. Stat. § 116D.04 Subd. 10.

#### 2. Authority fixing time limit for obtaining certiorari review.

Minn. Stat. § 216B.27; Minn. Stat. § 216B.52; Minn. Stat. § 14.63. Relator also cites to Minn. Stat. § 116D.04 Subd. 10.

The PUC made the decision to deny the petition of the Association of Freeborn County Landowners (“AFCL”) for an Environmental Assessment Worksheet (“EAW”) at its February 6, 2020 meeting. The PUC notified the Environmental Quality Board (“EQB”) of its decision on February 13, 2020. *See* Minn. R. 4410.1100 Subp. 8 (requiring Responsible Government Unit to notify EQB within 5 days of its decision on EAW request).

At the time this appeal was filed, the PUC had not issued a written order denying Relator’s request for an EAW. A party to a proceeding before the PUC may appeal from the PUC’s decision and order in accordance with Minnesota Statutes chapter 14. Minn. Stat. § 216B.52. No party may appeal a PUC decision until the PUC has ruled on a request for rehearing: “[n]o cause of action arising out of any decision constituting an order or determination of the commission or any proceeding for the judicial review thereof shall accrue in any court to any person or corporation unless the plaintiff or petitioner in the action or proceeding within 20 days after the service of the decision . . . .” Minn. Stat. § 216B.27. A petition for a writ of certiorari must be filed within 30 days after the aggrieved party receives the final decision and order of the agency. Minn. Stat. § 14.63. Pursuant to Minn. Stat. § 216B.27, subd. 5, the PUC does not completely exercise its powers until it acts on applications for rehearing or until an application for rehearing is deemed denied by implication as provided for in Minn. Stat. § 216B.27, subd. 4.

No application for rehearing has been filed because the PUC issued its written order on March 31, 2020.

**C. Other appellate proceedings.**

AFCL previously appealed the PUC’s decision to amend a permit for the construction of the wind facility at issue here. *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*. The PUC issued its Final Order amending the permit on July 2, 2019. That appeal has been stayed because the permit applicant requested additional amendments that could impact the issues raised in the appeal. AFCL indicated in its Statement of the Case in this docket that it will seek to consolidate these appeals.

**D. Finality of Order.**

1. Does the order to be reviewed dispose of all claims by and against all parties?  Yes  No
  
2. Date of orders: **March 31, 2020**

**III. TYPE OF LITIGATION AND STATUTES AT ISSUE.**

This is a certiorari appeal from the PUC’s decision to deny a request for an EAW in PUC Docket No. IP6946/WS-17-410. The statutes at issue include Minn. Stat. Ch. 116D (“MEPA”).

**IV. BRIEF DESCRIPTION OF CLAIMS, DEFENSES, ISSUES LITIGATED, AND RESULT BELOW.**

On June 15, 2017, Freeborn Wind Energy LLC (“Freeborn Wind”) filed a site permit application to construct a collection of wind turbines in Freeborn County, capable of generating up to 84 megawatts. On December 19, 2018, the PUC applied the criteria for considering large wind energy conversion systems provided in Minn. Stat. Ch. 216F, Minn. Stat. § 216E.03, and Minn. R. Ch. 7854 and approved the permit. AFCL filed a Petition for Reconsideration on January 8, 2019. The PUC amended the permit on May 10, 2019, but did not accept the proposals in AFCL’s Petition for Reconsideration. On May 30, 2019, AFCL filed a Petition for Reconsideration of the permit amendments. On July 2, 2019, the PUC denied AFCL’s Petition for Reconsideration. On August 1, 2019, AFCL appealed the PUC’s May 10, 2019 order.

On August 20, 2019, the permit holder, Xcel Energy, filed an application requesting additional amendments to the permit. On December 19, 2019, the PUC met and granted Xcel’s request. On January 1, 2020, AFCL filed a petition with the EQB for an EAW. The PUC met on February 6, 2020 and verbally denied

AFCL's request. On February 13, 2020, the PUC notified the EQB of its decision to deny the EAW. *See* Minn. R. 4410.1100, Subp. 8. The EQB published the PUC's decision in the EQB Monitor on February 18, 2020. On March 31, 2020, the PUC issued its written order denying AFCL's Petition for an EAW and granting Xcel's requested amendments.

**V. ISSUES PROPOSED TO BE RAISED UPON APPEAL.**

1. Whether the PUC's decision to deny AFCL's Petition for an EAW was correct and lawful.
2. AFCL's Statement of the Case suggests that it will raise numerous issues related to the PUC's December 19, 2018 order issuing the permit, and its May 10, 2019 order amending the permit. *See* AFCL's Statement of the Case at 8-9. These issues are not proper in this appeal. Minn. Stat. § 216B.27, Subd. 2 (prohibiting appeal of any issue that was not raised in reconsideration petition within 20 days of a PUC order). *See also* Order, A19-1195, 2-3 (Aug. 27, 2019) (stating that AFCL's appeal is limited to issues decided in May 10, 2019 order).

**VI. RELATED APPEALS.**

AFCL has previously appealed the PUC's decision to amend a permit for the construction of the wind facility at issue here. *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*. That appeal has been stayed. AFCL has stated that it will seek to consolidate these appeals.

**VII. IS A TRANSCRIPT NECESSARY TO REVIEW THE ISSUES ON APPEAL?**

Yes                       No

If yes, full  or partial  transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator?    Yes                       No

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04?

Yes                               No

**VIII. IS ORAL ARGUMENT REQUESTED?**

Yes

No

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2?  Yes  No

If yes, state where argument is requested:

**IX. IDENTIFY THE TYPE OF BRIEF TO BE FILED.**

Formal Brief

Informal Brief

Trial Memoranda

**X. NAMES, ADDRESSES, ZIP CODES, AND TELEPHONE NUMBERS OF ATTORNEYS FOR PETITIONER AND RESPONDENT:**

|   |   |
|---|---|
| <p>RELATOR<br/>Carol A. Overland<br/>Atty. Reg. No. 254617<br/>Legalelectric, Inc.<br/>1110 West Avenue<br/>Red Wing, MN 55066<br/>Telephone: (612) 227-8638 (Voice)</p> <p><i>Attorney for Relator Association of<br/>Freeborn County Landowners</i></p> | <p>RESPONDENTS<br/>Ian Dobson<br/>Assistant Attorney General<br/>Atty. Reg. No. 0386644<br/>Minnesota Attorney General's Office<br/>445 Minnesota Street, Suite 1100<br/>St. Paul, MN 55101<br/>Telephone: (651) 757-1432 (Voice)</p> <p><i>Attorney for Respondent Minnesota<br/>Public Utilities Commission</i></p> <p>Christina K. Brusven<br/>Atty. Reg. No. 0388226<br/>Alethea M. Huyser<br/>Atty. Reg. No. 0389270<br/>Fredrickson &amp; Byron P.A.<br/>200 South Sixth Street<br/>Suite 4000<br/>Minneapolis, MN 55402-1425<br/>Telephone: (612) 492-7000</p> <p><i>Attorneys for Respondent Freeborn Wind<br/>Energy LLC</i></p> |
|---|---|

Dated: April 1, 2020

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