

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

Association of Freeborn County
Landowners,

Relator,

vs.

Minnesota Public Utilities Commission,

and

Freeborn Wind Energy LLC

Respondents.

**RESPONDENT FREEBORN WIND
ENERGY LLC'S STATEMENT OF THE
CASE**

PUC DOCKET NO.:
IP-6946/WS-17-410

APPEAL COURT CASE NO.:
A20-0410

1. Court or agency of case origination and name of judge or hearing officer who presided.

Relator Association of Freeborn County Landowners ("Relator" or "AFCL") purports to appeal a decision of the Minnesota Public Utilities Commission ("Commission"), Commissioners Katie Sieben, Matthew Schuerger, and John Tuma.

2(B). Jurisdictional statement: Certiorari Appeal

Statute, rule or other authority authorizing certiorari appeal:

Authority governing Relators' Writ of Certiorari is Minn. Stat. §§ 14.69, 216B.27, subd. 2, and 216B.52, subd. 1; 116.04, subd. 10, and Minn. R. App. P. 115.

Date of entry of judgment or date of service of notice of filing or order from which appeal is taken:

Relator appeals from publication in the Minnesota Environmental Quality Board (“EQB”) Monitor on February 18, 2020, of the decision of the Commission to deny a Petition for an Environmental Assessment Worksheet (“EAW”) in connection with the amendments to a previously-issued site permit in the above-captioned matter. The Commission issued an order denying the Petition for EAW on March 31, 2020, but that order is not yet a final decision pursuant to Minn. Stat. §§ 216B.27 and 216B.52.

Relator’s Statement of the Case also includes legal issues that are outside the scope of the decision made by the Commission on February 6, 2020. *See* Statement of the Case Petitioner/Relator (Mar. 18, 2020) at pp. 9-10 (including legal issues b-g, which were not considered by the Commission as part of its denial of the Petition for EAW). Those issues, as well as the question of which of the issues were preserved on appeal, are the subject of a prior appeal. *See In the Matter of Freeborn Wind Energy LLC’s Application for Large Wind Energy Conversion System Site Permit for the 84 MW Freeborn Wind Farm in Freeborn County*, Case No. A19-1195 (Aug. 27, 2019 Order (recognizing appellate issues limited to the “specific matters addressed in the May 10, 2019 amended order”); Oct. 1, 2019 Order (staying case pending Commission’s final Order on Freeborn Wind’s

site permit amendment application, which was recently issued on March 31, 2020)).

Authority fixing time limit for obtaining certiorari review:

Minn. R. Civ. App. P. 115.01, subd. 1

Minn. Stat. §§ 116.04, subd. 10; 216B.27, subds. 2, 3, 5; 216B.52; 14.63

2(D). Jurisdictional statement: Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees?

No. See Response to 2(B).

If no, did the district court enter a final partial judgment for immediate appeal pursuant to Minn. R. Civ. App. P. 104.01?

Not applicable.

If no, is the order or judgment appealed from or reviewable under any exception to the finality rule?

No.

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

Relator seeks review of the vote at the Commission’s February 6, 2020 meeting, denying Relator’s Petition for an EAW on the amendment filed on August 19, 2019 for Respondent Freeborn Wind Energy LLC’s (“Freeborn Wind”) Site Permit to construct and operate the up to 84 MW Freeborn Wind Farm in Freeborn County, Minnesota.

The Petition for EAW was filed under Minn. Stat. § 116D.04 and Minn. R. Ch. 4410. Environmental review for siting of a Large Wind Energy Conversion System (“LWECS”) is governed by Minn. Stat. Chs. 116D, 216E, and 216F and Minn. R. Chs. 4410 and 7854.

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

On August 19, 2019, Respondent Freeborn Wind filed with the Commission a petition to amend its previously issued Site Permit to construct and operate the up to 84 MW Freeborn Wind Farm in Freeborn County, Minnesota. At a meeting on December 19, 2020, the Commission voted to grant Relator's request to amend the Freeborn Wind Farm Site Permit and to authorize staff to reissue the site permit reflecting the modifications, but the written order has not yet issued. On January 1, 2020, Relator filed a Petition for EAW for the Freeborn Wind Farm with the EQB, which was transmitted to the Commission as the Responsible Government Unit ("RGU"). On February 6, 2020, the Commission voted at its meeting to deny the Petition for EAW. Pursuant to Minn. R. 4410.1100, subp. 8, the Commission provided written notice of its decision to EQB staff, petitioner, and the project proposer on February 13, 2020. The EQB then published notice of the decision in the EQB Monitor on February 18, 2020. The Commission recently issued its written order on March 31, 2020, and reconsideration has not yet occurred.

The Commission denied the EAW because environmental review for the proposed amendment was conducted consistent with an adopted alternative method of environmental review as set forth in Minn. Stat. Ch. 116D, 216E and 216F, as well as Minn. R. Ch. 4410 and 7854. *See* Minn. R. 7854.0500, subp. 7 (EQB-adopted rule, originally enacted in 2002 as Rule 4401.0450, stating that "[t]he analysis of the environmental impacts required by this subpart satisfies the environmental review requirements of chapter 4410, parts 7849.1000 to 7849.2100, and Minnesota Statutes,

chapter 116D” and “[n]o environmental assessment worksheet . . . shall be required on a proposed LWECS project.”); *see also Minnesota Ctr. for Env’tl. Advocacy v. Minnesota Pub. Utilities Comm’n*, No. A10-812, 2010 WL 5071389, at *4 (Minn. App. Dec. 14, 2010) (stating that compliance with alternate environmental review process satisfies the Commission’s environmental review responsibilities under the Minnesota Environmental Policy Act).

The remaining issues identified in the Relator’s Statement of the Case are outside the scope of the Commission’s decision on February 6, 2020.

5. Specific issues proposed to be raised on appeal.

- Did the Commission properly deny a Petition for EAW associated with the proposed amendment to the Site Permit for the 84 MW Freeborn Wind Farm where environmental review was occurring pursuant to an EQB-adopted alternative review process?

6. Related appeals.

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

In the Matter of Freeborn Wind Energy LLC’s Application for Large Wind Energy Conversion System Site Permit for the 84 MW Freeborn Wind Farm in Freeborn County, Case No. A19-1195 (currently stayed pending Commission Order on Site Permit amendment). Relator has filed a motion to consolidate the appeals.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

None.

7. Contents of record.

Is a transcript necessary to review the issues on appeal?

Yes.

If yes, full or partial transcript?

Full.

Has the transcript already been delivered to the parties and filed with the trial court administrator?

No.

If not, has it been ordered from the court reporter?

Yes.

8. Oral argument.

Is oral argument requested?

Yes.

If so, is oral argument requested at a location other than that provided in Rule 134.09, subd. 2?

No.

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02.

10. Names, addresses, zip codes and telephone numbers of attorney for relator and respondents.

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Respectfully submitted,

Dated: April 1, 2020

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