

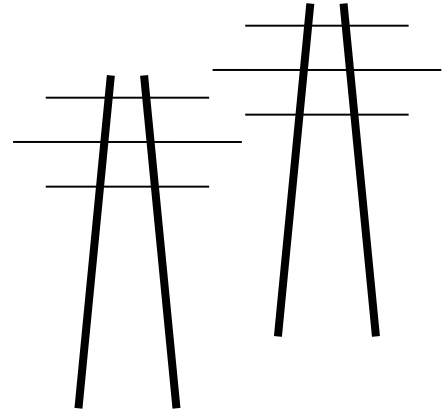
Legalelectric, Inc.

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

July 15, 2020

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St Paul, MN 55101



Filed via eDockets only

RE: REMOVE COMMISSIONER TUMA’S “DECISION OPTION”
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

To the Commission:

On behalf of Association of Freeborn County Landowners (AFCL), I wish to note that I’ve just received a “decision option” proposed by Commissioner Tuma and apparently presumed to be moved at tomorrow’s meeting as “some other action.”

AFCL VEHEMENTLY OBJECTS AND REQUESTS THAT TODAY’S “DECISION OPTION” BE REMOVED FROM CONSIDERATION.

I. THIS PROPOSAL IS NOT ON THE MEETING AGENDA.

The only item on the agenda for tomorrow’s meeting is Sue Madsen’s Request for Permit Amendment as provided by the Freeborn Wind permit Section 13. With less than 24 hours notice, there is no benign reason for this last-minute addition. This is an impermissible abuse of process. Commissioner Tuma is in the habit of introducing last-minute decision options, where there is inadequate time to consider the proposal. In this case, it is much more egregious than usual, as it involves Oakland and London Townships, parties that have no or little interest in the Permit Amendment proposed by Sue Madson. Madson’s request is the only Freeborn issue on the Commission’s agenda. Oakland and London township should be given at least the requisite 10 days advance notice before consideration of an action with such great significance.

II. NSP/XCEL HAS MOVED THE 17 TURBINES TO IOWA – PAST TENSE

It's unfortunate, but it seems the Commission's eDockets system was the last to know of NSP/Xcel's decision to remove 17 turbines from the Freeborn Wind project. Removal of the turbines is done. The maps are drawn and posted. NSP/Xcel admits that that is the plan.

On July 10, 2020, NSP/Xcel finally disclosed in a voluminous series of filings that "the Company will be moving 17 turbines originally planned to be built in Freeborn County to Worth County, Iowa."¹ Further, NSP/Xcel admits it "developed this back up plan, over the past few months... notified DOC-ERA of the alternative" although this was not revealed publicly until July 10, 2020. AFCL became aware that 17 turbines had been removed, past tense, when it received haul-route and project plan maps from two independent sources, as stated in our Notice of Motion and Motion for Order to Show Cause, pending before the Commission. If on July 10 NSP states it developed this plan "over the past few months," it would have been in the works at the time of the May 13, 2020 Pre-construction meeting. NSP's meeting summary states:

Matt Langan provided an update that Xcel Energy is still in negotiations for oversize/overweight permits with the legal counsel for London and Oakland Townships. Xcel energy will keep DOC/PUC up to date on any developments, and will submit an update to eDockets as the status of the situation changes.

Summary, III(f), p. 2². Apparently, neither Xcel Energy nor Commerce-EERA bothered to notify the Commission of its "few months" old plan prior to the NSP/Xcel July 10, 2020 filing, filed long after its maps were drawn up with 17 fewer turbines; maps that are on display in the Wanzek construction trailer and maps provided to Freeborn County's Dan Rasmussen, both of which landed in the hands of AFCL on or before June 22, 2020. There was nothing filed by NSP/Xcel or Commerce-EERA in eDockets notifying the Commission, parties, or the public until July 10, 2020. The planned change to just 24 turbines in Minnesota was not filed by

1

20207-164813-01	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 1 OF 5	07/10/2020
20207-164813-02	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 2 OF 5	07/10/2020
20207-164813-03	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 3 OF 5	07/10/2020
20207-164813-04	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 4 OF 5	07/10/2020
20207-164813-05	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 5 OF 5	07/10/2020

² This NSP summary states, "Matt Langan stated that most permits have been obtained or are close to issuance. Specific construction activities will not commence without necessary approvals." Summary, III(g), p. 3. The water permit from the County Ditch Authority was not issued until July 10, 2020, and upon information and belief, has not yet been registered by the county auditor, and therefore not complete. The project has been withdrawing many loads of water every day without a permit. The statement that "Specific construction activities will not commence without necessary approvals" appears to be a false statement, although what "specific" means in this context is not clear

NSP/Xcel until TWO WEEKS after AFCL disclosed this fact as the basis for its Motion for Order to Show Cause, filed June 26, 2020.

III. “DECISION OPTION” IS CONTRARY TO MINNESOTA’S TENET OF LOCAL CONTROL

Minnesota law gives townships the authority to issue and the authority to deny oversized and overweight permits. Period. Action by the Commission to override the township authority is asking for yet another legal challenge. The townships of Oakland and London have declined to join in the Freeborn County Development Agreement, and have their own fully legitimate process for permit review. NSP/Xcel appears to regard the townships’ exercise of their authority as “obstructive behavior.” Xcel Response to AFCL Motion for Order to Show Cause, p. 2.

This “decision option,” proposes that the Commission “amend the permit authorizing Permittee access to the public roads within the Townships of Oakland and London subject to the provisions of the Freeborn County Development Agreement (filed March 11, 2020, PUC Document 20203-161121-01)” and take comment, and allowing construction to continue “as if there were the establishment of satisfactory arrangements for road mitigations in Oakland and London Townships through this amendment process... until the conclusion of this amendment process.” WHAT? Improper assumptions are built into that paragraph.

The Commission must give proper notice and background and provide opportunity for Oakland and London townships to address this notion proposed by Commissioner Tuma.

IV. WHO WHAT WHERE WHY WHEN IS COMMISSIONER TUMA PROPOSING TO OVERRIDE TOWNSHIP AUTHORITY

Commissioner Tuma’s “decision option” comes out of the blue, raising “who, what, where, why, when” questions of provenance. Why would Commissioner Tuma make this proposal when Xcel has not filed any request for this action? What is Commissioner Tuma’s interest? There is no request for such an action from NSP/Xcel filed in eDockets – is this the result of another “settlement” meeting from which AFCL was excluded?

V. AFCL ASKS THAT THIS “DECISION OPTION” BE WITHDRAWN

AFCL requests that this last minute “decision option” be withdrawn – it poses an action not on the agenda contrary to basic rules of procedure and is contrary to Minnesota’s tenet of local control. Oakland and London townships must be given opportunity to address this proposal, **IF** it comes up again, but to be clear, it should not. The Commission should not circumvent Oakland and London townships’ decisions regarding overweight and oversized permits.

Very truly yours,



Carol A. Overland
Attorney at Law