

**BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Katie Sieben
Valerie Means
Matt Schuerger
Joseph Sullivan
John Tuma**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**Complainant,
Association of Freeborn County Landowners**

v.

**Respondent,
Chair/Commissioner Katie Sieben**

and

**Respondent,
Commissioner John Tuma**

**COMPLAINT OF VIOLATION
OF COMMISSIONERS'
CODE OF CONDUCT**

**Agenda Meeting:
July 16, 2020**

**Freeborn Wind, LLC
PUC Docket:
IP6946/WS-17-410**

Commission Chair Katie Sieben and Commissioner John Tuma (jointly Respondents) file this joint¹ Answer in response to the August 4, 2020 Complaint (Complaint) filed by the Association of Freeborn County Landowners (AFCL) pursuant to Minnesota Statutes § 216A.037.

Respondents take very seriously their obligations under the Commission's Code of Conduct and rules on ex parte conduct, codified in Minnesota Rules Chapter 7845. AFCL's Complaint, however, fails to establish a violation of these rules. The Complaint represents a misunderstanding of the Commission's process and its ethics rules. While AFCL clearly disagrees with some of the Commission's actions in this docket, AFCL can and has pursued its right to seek judicial review of those decisions.² AFCL's disagreements are properly litigated in those courts, and not by shoehorning disagreements over disputed issues into an ethics complaint. Respondents ask that the Complaint be dismissed by the assigned Administrative Law Judge (ALJ)

¹ To the extent that AFCL raises questions about ex parte contacts, those questions relate only to Commissioner Tuma and not Chair Sieben. The response in Section F herein are Commissioner Tuma's alone.

² AFCL has filed multiple appeals related to the Freeborn docket, *see* Case Nos. A19-1195 and A290-0947 (now consolidated), and has also filed suit against the Commission in Ramsey County District Court, *see* AFCL v. MPUC, Case No. 62-CV-20-3674. On August 5, 2020, the Commission filed a Motion to Dismiss the district court proceeding.

because it does not follow the proper procedure. If it is not dismissed, the ALJ should find there have been no violations of either the ex parte rules or the code of conduct.

I. Background

The Freeborn Wind Project (Project) has been proceeding in front of the Commission since June 2017. AFCL intervened as a party in the matter, has participated throughout, has filed multiple appeals related to the Project, and has filed suit in district court to enjoin the Project's construction. The Commission issued a permit for the Project on December 19, 2018.³ AFCL, among others, petitioned for reconsideration,⁴ which was denied on May 10, 2019.⁵ Several permit amendments have followed, which AFCL has generally opposed.

On May 21, 2020, Ms. Sue Madson filed a permit amendment request under the procedures laid out in the permit.⁶ AFCL filed comments on June 4, recommending that the Commission approve Ms. Madson's request.⁷ Xcel Energy and DOC-EERA filed reply comments to Ms. Madson's request on June 4 and 5, respectively.⁸ On June 29, 2020, AFCL filed a motion for order to show cause, informing the Commission that Xcel intended to remove some turbines from the project and move them to Iowa.⁹ On July 2, 2020, the Commission provided notice that Ms. Madson's permit amendment request would be taken up at a hearing on July 16, 2020.¹⁰ On July 9, 2020, Commission staff filed their briefing papers related to Ms. Madson's permit amendment request.¹¹ On July 10, 2020, Xcel filed a response to AFCL's motion.¹² On July 15, 2020, Respondent Commissioner Tuma filed an additional decision option for the Commission to consider during the July 16, 2020 hearing.¹³

During the July 16, 2020, the Commission first considered Ms. Madson's request for a permit amendment, which was denied. The Commission then discussed Respondent Commissioner Tuma's proposal. After a discussion, Commissioner Tuma did not make a motion, and the Commission took no action on the issue.

Minn. R. 7854.1300, subp. 4 provides, "The commission may initiate action to consider amendment . . . of a site permit for an LWECs on its own initiative or upon the request of any person. No site permit may be amended or revoked without first providing notice and affording due process *to the permit holder.*" (emphasis added).

³ Order Issuing Site Permit and Taking Other Action (Dec. 12, 2018), eFile No. 201812-148595-01.

⁴ AFCL Petition for Reconsideration (Jan. 9, 2019), eFile No. 20191-148990-01.

⁵ Order Amending Site Permit (May 10, 2019), eFile No. 20195-152849-01.

⁶ Madson Permit Amendment Request (May 21, 2020), eFile No. 20205-163405-01.

⁷ AFCL Comments (June 4, 2020), eFile No. 20206-163741-01.

⁸ Xcel Reply Comments (June 4, 2020), eFile No. 20206-163710-01; DOC-EERA Reply Comments (June 4, 2020), eFile No. 20206-13774-01.

⁹ AFCL Motion for Order to Show Cause (June 26, 2020), eFile No. 20206-164298-01.

¹⁰ Notice of Commission Meeting—July 16, 2020 Agenda Meeting (July 2, 2020), eFile No. 20207-164587-01.

¹¹ Commission Staff Briefing Papers (July 9, 2020), eFile No. 20207-164780-01.

¹² Xcel Response to AFCL Motion (July 10, 2020), eFile No. 20207-164813-01 through -05.

¹³ Additional Decision Option (July 15, 2020), eFile No. 20207-164936-01.

II. AFCL's Complaint Should Be Dismissed Because it is Procedurally Improper.

The Complaint should be dismissed because the complaint procedure in Minn. Stat. § 216A.037 is reserved for potential violations of the ex parte rules, and AFCL has not clearly alleged a violation of the ex parte rules. While AFCL states at p. 3 of the complaint, “this is also a complaint of an ex parte communication,” AFCL does not specifically identify such a communication and simply asks at page 24 of the complaint, “was there ex parte contact?”

Minn. Stat. § 216A.037, subd. 4 provides the procedures to be applied when a complaint is filed. Subdivision 4(f) clarifies that an ALJ will be assigned to “the *ex parte* complaint.” Subdivision 4(g) directs the ALJ to “set forth the judge’s findings as to whether *ex parte* violations occurred.” The potential sanctions described in Subdivision 4(h) describe what may be done if “prohibited ex parte communication” has taken place. The complaint procedures are about ex parte violations.

This conclusion is supported by Minnesota Rules Chapter 7845. Rules 7845.7000 through 7845.7900 are related to ex parte communications. Rule 7845.7700 permits persons to seek sanctions for alleged ex parte violations, and Rule 7845.7800 describes the process for resolving complaints of alleged ex parte violations. Rules 7845.0100 through 7845.1000 contain the Commission’s Code of Conduct. Importantly, there is no provision for individuals to file a “complaint,” and no procedure for resolving a complaint, in the Code of Conduct. Further, the exclusive remedy for violations of the Code of Conduct is a sanction pursuant to collective bargaining agreements, or state employment statutes such as Minn. Stat. §§ 15.0575, 216A.036, and 43A.33.

AFCL’s Complaint does not clearly allege any ex parte violations. In fact, the Complaint is styled as a “Complaint of Violation of Commissioners’ Code of Conduct.” Reviewing sections III.A through III.G,¹⁴ AFCL only cites to rule provisions contained in the Commission’s Code of Conduct.¹⁵ AFCL mentions Rule 7854.7200 in its introduction, but does not clearly identify any statements it believes were ex parte communication. To the extent that AFCL is concerned about discussions that took place during an open meeting, those clearly cannot be ex parte communications because they took place in public, on the record. Because AFCL fails to identify any specific ex parte communication as the basis for its Complaint, there is nothing to resolve pursuant to Minn. Stat. 216A.037 and the Complaint should be dismissed.¹⁶

¹⁴ There are two sections in the Complaint labeled III.G.

¹⁵ Section III.A—Minn. R. 7845.0400; Section III.B—Minn. R. 7845.0400; Section III.C—no citation to ethics rules; Section III.D—no citation to ethics rules; Section III.E—no citation to ethics rules; Section III.F—Minn. R. 7845.0400; Section III.G—Minn. R. 7845.0400; Section III.G(second)—Minn. R. 7845.0500 and .0600.

¹⁶ Respondents recognize that the procedures for resolving a complaint under 216A.037 are somewhat unclear. The ALJ could dismiss the complaint entirely, or could recommend dismissal by the Commission.

While Respondents do not believe that the complaint procedures under 216A.037 are the proper vehicle for the vast majority of AFCL's complaints, Respondents also believe that it is important that the public have a vehicle to raise potential ethical concerns to the agency. AFCL's concerns have been forward to senior officials within the Commission for their consideration and appropriate action. Respondents encourage future concerns related to the Code of Conduct, as opposed to the ex parte rules, to be referred to the Commission's Executive Secretary.

III. Respondents Did Not Violate the Ex Parte Rules or the Code of Conduct.

The actions described in the Complaint are not violations of either the ex parte rules or the Code of Conduct. AFCL raises eight arguments in its complaint, and this Answer will address them in turn.

A. There are no notice or service requirements for a Commissioner to move for a vote.

AFCL first argues that Respondents violated the Code of Conduct by taking up a "motion" without following the proper notice and service procedures. This argument reflects a misunderstanding of several parts of the Commission's process. AFCL correctly recognizes that Rule 7829.0410 permits "parties" to file motions before the Commission and establishes some process about how motions can be resolved. AFCL appears to assume that this Rule applies to Commissioners, but that is not the case. The Rule is clearly directed to "a party to a proceeding," Minn. R. 7829.0410, subp. 1, and not Commissioners.

It is true that the Commissioners sometime discuss "motions" or "decision options," but that is because the Commission follows a form of legislative procedure when taking votes. This procedure is outlined in the Commission's Meeting Procedures policy, which is attached, and have been operative at every Commission agenda meeting since the policy was adopted in 1995—many of which have been attended by AFCL and its attorney. Commissioners routinely move to vote, since the Commission is required to take action by a majority vote at an open meeting.¹⁷ Commissioners occasionally pre-file the decisions they are considering, in order to give parties an opportunity to see them before they are moved. In fact, the decision option AFCL disputes was simply to open up a topic for public comment and input—the Commission was never considering a final decision on the issue. It is not an ethical violation for Respondents to follow the Commission's parliamentary procedure that is employed by the agency week-in and week-out.

¹⁷ Minn. Stat. § 216A.03; Minn. Stat. § 216B.26; Minn. Stat. Chapter 13D.

Furthermore, Minn. R. 7854.1300, subp. 4, provides that the Commission may not amend a permit without providing notice to the *permit holder*. Xcel was present for and participated in the discussion, indicating that the Commission fully satisfied its notice requirements for considering a permit amendment.

B. The Commission was not required to take up AFCL’s motion before considering a notice and comment period.

AFCL’s second argument is that the Respondents erred by discussing Commissioner Tuma’s proposal to open a notice and comment period before taking up a separate motion filed by AFCL, and it is similarly without merit.

On June 26, 2020, AFCL filed a Motion for Order to Show Cause, requesting that the Commission order Xcel to disclose its revised plan for the Freeborn project, and show cause as to why it should not be required to file a new permit application.¹⁸ Xcel filed an Answer on July 10, 2020. The Commission has not yet taken up the motion. During the hearing on July 16, 2020, the Commission discussed whether and how to obtain more information about Xcel’s plan to move some turbines from Minnesota to Iowa. Commissioner Tuma also asked Xcel’s representatives why the company had decided to move the turbines rather than present certain township road issues to the Commission. AFCL argues that Respondents demonstrated an unfair preference by discussing the potential for a comment period before taking up AFCL’s motion.

While this discussion was related to AFCL’s motion, AFCL does not identify any legal requirement for the Commission to take up its motion before considering whether to issue a notice and comment period on a related issue—because there are none.¹⁹ Further, the Respondent’s discussion was about whether to seek more public input on the issue, not how the issue should be resolved. The idea that AFCL is being cut out of the process by considering whether to open a comment period is absurd. If the Commission had opened a comment period—which it did not—AFCL would have then had an opportunity to file comments. In fact, AFCL’s attorney *was* given an opportunity to address the Commission during the hearing, though AFCL chose not to request a transcript of that part of the hearing.

C. Respondents did not discount participation by considering whether to open a comment period to seek participation.

AFCL’s third argument is that Respondents did not recognize the rights of parties and participants to participate. The argument that the Respondents “discounted” participation rights

¹⁸ AFCL Motion, June 29, 2020, eFile No. 20206-164311-01.

¹⁹ It is worth noting here that AFCL does not represent the townships.

by holding a discussion on whether to open a comment period, so that AFCL could file comments, makes no sense.

First, while there are robust public participation opportunities in Commission proceedings, parties and participants do not have an inherent right to speak during Commission agenda meetings.²⁰ Both AFCL and townships have had an opportunity to participate thoroughly in this matter.

Second, Respondents were engaged in a discussion about whether to establish more public participation. It does not make any sense to argue that the Respondents discounted public participation by considering how to have more public participation—which may explain why AFCL did not cite to any of the Commission’s ethics rules in advancing this argument.

Third, the Commission routinely opens comment periods without notice or public discussion—it is an administrative matter that is normally done at the staff level. Holding a public discussion about a potential comment period is actually *more* open and transparent than standard practice.

D. Respondents did not commit an ethical violation related to “local control.”

AFCL’s fourth argument is that Respondents did not recognize Minnesota’s tenet of “local control.” AFCL does not explain what ethical rules it believes Respondents violated, and instead presents a discussion of laws related to local control.

AFCL is confusing legal disputes with ethical requirements. It is not an ethical violation for Commissioners to engage in a discussion about a potential legal issue. It is clear that Xcel and the townships have a legal dispute about use of township roads. Publicly discussing that dispute, and considering whether to take comments on it, is a responsible way for Respondents to exercise their regulatory duties, and cannot reasonably be taken as some sort of ethical violation.

Further, AFCL’s complaint misstates the law. AFCL states, “Local control of townships may only be pre-empted by the Commission with ‘good cause,’” and cites to Minn. Stat. § 216F.081. But that statute applies to *county* ordinances, not municipal or township ordinances. AFCL also ignores Minn. Stat. § 216F.07, which provides that “[a] permit under this chapter is the only site approval required for the location of an LWECS,” and that “[t]he site permit *supersedes and preempts all zoning, building, or land use rules.*” Ignoring the pre-emption statute while advancing this argument is disingenuous at best. Most importantly, however, the claim regarding local control is not a complaint of an ethics violation.

²⁰ Commission Meeting Procedures.

E. Respondents did not “thwart” public participation by discussing whether to open a comment period.

AFCL’s fifth argument is similar to prior arguments about public participation, and lacks any merit. AFCL correctly notes that Minn. Stat. § 216F.02 requires the Commission to adopt broad spectrum citizen participation in its siting proceedings. The Commission, and Respondents, have done so in this case. The Commission opened several comment periods, held a public hearing and an evidentiary hearing, and received more than 100 public comments during this proceeding. AFCL was a formal party in the case and has filed dozens of documents in the case. It cannot be disputed that there has been broad public participation in this case. The argument that the Commission was required to hear from AFCL or others before considering whether or not to take comments is absurd, and that it was some sort of *ethical violation* not to do so, is absurd.

F. Respondent Commissioner Tuma did not make false statements or engage in prohibited ex parte communication.²¹

AFCL’s sixth argument is that Respondent Commissioner Tuma made “false statements” during the hearing on July 16, 2020. These assertions are incorrect. Commissioner Tuma’s statement about township representation was at best a misunderstanding, and it cannot be seriously suggested that it was some sort of ethical violation.

Respondent Commissioner Tuma files an Affidavit along with this answer that provides more context regarding the second statement about Freeborn County’s plans for the revenues generated by the project. The Affidavit demonstrates that Respondent Commissioner Tuma’s statements were not “false.” More importantly, the brief discussion about this issue cannot seriously be interpreted as some sort of conflict of interest or impropriety as suggested by AFCL.

AFCL does not clearly allege that any of these communications were ex parte communications.²² To the extent that the ALJ and/or Commission determine this assertion should be addressed, the Affidavit clarifies that no prohibited ex parte communications took place. The source of Commissioner Tuma’s statements about Freeborn County’s COVID business recovery program was an announcement made to conference attendees by a member of the Minnesota Rural Energy Board (MREB), at which Commissioner Tuma was a guest speaker. The Affidavit also describes a subsequent conversation Commissioner Tuma held with Freeborn County Board of Commissioners Chair Glen Mathiason.²³ During this conversation, Chair

²¹ As noted in fn 1 above, this section addresses allegations made exclusively against Commissioner Tuma, and the response herein is his alone.

²² Compare Complaint p. 3 “This is a complaint of an ex parte communication,” and complaint p. 24, “Was there ex parte contact?”

²³ Arguably, Freeborn County is still a participant at this stage of the proceeding because the Freeborn County Board of Commissioners filed a public comment on July 13, 2017. Public Comment, July 13, 2017, eFile No. 20177-

Mathiason expressed frustration about the Project, and the discussion turned to a broader topic of how to better involve townships in PUC permitting decisions not specific to this matter. See Tuma Affidavit.

Neither receiving the announcement or following up with Mr. Mathiason are prohibited ex parte communications. Minn. R. 7845.7200 prohibits communications between a Commissioner and a party or participant concerning a material issue during a contested case proceeding, a rulemaking proceeding, or in a disputed formal petition. The contested case proceeding in this matter is long since finished and that part of the ex parte rule no longer applies. A “disputed formal petition” is defined as:

A formal petition

- (1) Filed with the commission
- (2) For which a hearing is not automatically required,
- (3) For which the commission has received a statement disputing the action or relief sought in the petition, and
- (4) On which the commission has ordered comments, written responses to comments, oral argument, negotiations, settlement conferences, a formal hearing, or other procedures it considers necessary or helpful to enable it to decide the petition.

Minn. R. 7845.7000, subp. 4. The Commission has not taken any action in regard to AFCL’s Motion, and so that filing does not constitute a disputed formal petition and cannot form the basis of a prohibited ex parte communication.

Further, the communications were not material to this matter. A material issue is one that “may affect the merits or outcome of an on-the-record proceeding.” Minn. R. 7845.7000, subp. 5. The record clearly demonstrated that the county would receive some economic benefit for the project—what Freeborn chose to use that benefit for is not material to whether the Commission would issue a permit or not, a decision that had been made more than a year before the conversation in question. As to AFCL’s pending motion for order to show cause, the conversation about township road issues and involving local governments in permitting was likewise not material to whether Xcel should be required to seek an amendment to its permit.

G. Respondent Commissioner Tuma did not demonstrate bias or preference by discussing legal issues with Xcel.

AFCL’s sixth argument is that Respondents demonstrated inappropriate bias by allowing a discussion and discussing with Xcel whether it had legal options to continue with turbine construction despite its disagreements with the townships. As described above, it is clear that

Xcel and the townships have a legal dispute about the use of township roads for turbine construction. The Commission authorized this Project after three years of extensive hearings and exhaustive work by Commission staff, the Department of Commerce, and other agencies. It does not demonstrate bias to question a permittee about options it might have to complete the project as permitted. The Commission has continuing jurisdiction over the wind projects it permits, as it may modify, suspend, or revoke a permit. Minn. Stat. § 216F.04(d). If anything, Commissioner Tuma's comments could be construed as taking the permittee to task, rather than reflecting bias in favor of the permittee as AFCL suggests. Moreover, in the end Commissioner Tuma did not offer his motion and no action was taken on the issue. The discussion at the July 16, 2020 meeting was entirely proper and does not reflect bias or partiality on the part of Respondents.

H. Respondents did not commit an ethical violation by discussing the benefits that the project could create for Freeborn County.

AFCL's seventh argument is that Respondents demonstrated bias by discussing the financial benefits of the project for Freeborn County, but not for the landowners. Respondents are well aware of the financial benefits that flow from the project to landowners, which is why the Commission was engaged in a discussion about the possible value of the project. In fact, the discussion specifically touched on the value to landowners.²⁴ The argument that Respondents displayed bias that violates the Commission's ethics rules by discussing one issue, but not all other related issues, should not be taken seriously.

I. Conclusion.

Respondents recognize that AFCL does not agree with some of the Commission's recent actions, and that AFCL is in open litigation with the Commission in several venues. The Commission is routinely called on to resolve disputed issues among parties and participants, and is directed by the Legislature to make significant decisions that can affect individual landowners. Respondents take these responsibilities seriously. But the fact that the Commission rules against one party or another does not mean that a Commissioner has committed an ethical violation. Respondents' actions were entirely appropriate, consistent with their regulatory responsibilities, and were certainly not worthy of censure or disqualification.

The vast majority of AFCL's complaints are actually allegations of *legal error* by the agency, not ethical failures by individual commissioners. AFCL's attorney is well versed in the Commission's practices, and AFCL clearly knows how to avail itself of the remedies for any perceived legal error. Choosing to file an ethics complaint against individual Commissioners for issues that should be resolved through the legal process is wholly inappropriate, and should be dismissed without further action.

²⁴ See Transcript of Hearing at 12–13.

IV. Procedural Steps.

Minn. Stat. § 216A.037 directs that this matter must be referred to the Office of Administrative Hearings. The ALJ assigned to the matter is directed to conduct a “hearing investigation” and issue a report, but the statute provides no further guidance on what a hearing investigation is or how it is to be conducted. Respondents request that the ALJ conduct a hearing on the papers, considering the Complaint and this Answer, and render a report to the Commission within the proper time period.



Katie Sieben, Commission Chair



John Tuma, Commissioner

MINNESOTA PUBLIC UTILITIES COMMISSION

OPERATING PROCEDURES AND POLICY

MEETING PROCEDURES

I. Organization

The Governor selects the Chair for a term concurrent with the Governor's. The Chair is the principal executive officer of the Commission and presides at meetings of the Commission. The Chair organizes the work of the Commission, and may make assignments to Commission members, appoint committees, and give direction to the Commission staff through the Executive Secretary subject to the approval of the Commission. The Chair assigns to a Commissioner the duty of being Vice-Chair. The Vice-Chair presides in the Chair's absence.

II. Commission Meetings

A. Time

Meetings begin at the posted times but not before a quorum is present. The Chair may delay the beginning of a meeting after a quorum is present if an absent member is anticipated. Any member may, in advance, request a reasonable delay of the beginning of a meeting. Any meeting may be postponed, provided notice of postponement is given. Notice of postponement need not be in advance; it may be given at the time when the meeting would have started.

B. Attendance

Each Commissioner is expected to be present at every meeting of the Commission. Whenever possible, a Commissioner should give four weeks' notice to the Chair and Executive Secretary of a planned absence, and, when that notice is not possible, as soon as the Commissioner plans to be absent.

C. Quorum

The Commission takes no formal action in the absence of a quorum. Three Commissioners constitute a quorum; provided, however, if two or more vacancies exist on the Commission, two Commissioners constitute a quorum. A Commission action is taken by the affirmative vote of a majority of the Commissioners present when a quorum has been established and in effect.

D. Decorum

The Commission maintains order and decorum in the proceedings. Everyone must be patient, dignified and courteous. Those wishing to speak shall seek and obtain recognition from the Chair before addressing the Commission. To the extent possible, members of the audience will remain seated. Only Commissioners and Commission staff may approach the bench without first receiving the permission of the Chair.

Posters or placards are not permitted.

E. Process

Each item on the agenda for a meeting will be dealt with according to the following process, unless a different process has been announced to all parties:

1. Staff Report

The staff member(s) assigned to the item will present the staff report. At Agenda meetings on non-controversial or straightforward items, the staff may indicate availability for questions instead of presenting the report. If the Department of Commerce comments are the only report, a staff person from Commerce will normally be available to answer questions. Commissioners, after being recognized by the Chair, may ask questions of the staff.

2. Comments from Parties

At the discretion of the Chair, parties may be called upon for comments. The party with the burden of proof, normally the petitioning party, is called upon first. Other parties are called upon in an order determined by the Chair. After being recognized, Commissioners, staff, or counsel may ask questions of the parties. Additional rounds of comments will be permitted only upon the approval of the Chair.

Written material drawn from, or based on, the record of the Docket at issue may be used as illustrations by a speaker when addressing the Commission.

3. Public Comments

In many dockets the Commission gives notice of the opportunity to file public comment. In contested cases, there are formal steps for intervention and formal opportunities for public comment. Occasionally it will be useful to the Commission to accept public comments at the time of the Agenda meeting to aid

its deliberations, or because matters are raised that are of public interest and there was no formal public comment process.

In those instances where the Commission knows at the time that the meeting notice is issued that it will accept public comment, it will include information about public participation in the notice.

Absent such notice, the Commission does not ordinarily accept public comment at the Agenda meeting. Members of the public who wish to address the Commission are encouraged to notify Commission staff in advance of the meeting so that the Commission is aware of the request. However, failure to give such notice does not restrict the Commission's right to hear from the public during an open meeting if public comment will aid its decision.

The Commission reserves the right to limit the amount of time allocated to public comment to assure that it completes its agenda.

4. Deliberations

After all questions have been answered, deliberations begin. Parties will not speak during deliberations unless recognized by the Chair to answer specific questions of Commissioners, staff or counsel.

5. Motions

Any Commissioner seeking formal action of the Commission does so by making a motion. A motion **does not** have to be seconded to be considered by the Commission.

a. Debate

Any motion may be debated by the Commission except those listed below which are non-debatable:

To Move the Previous Question;
To Lay on the Table;
To Recess; and
To Adjourn.

b. Motion to Amend

All motions are subject to a motion to amend, however a motion to amend may not be any more removed from the main question than an

amendment to an amendment. A motion to amend is debatable and shall take precedence over the original motion.

6. Voting

a. Eligibility

The vote of each Commissioner present at a meeting is recorded when the question is presented by the Chair. Such votes are in the form of a negative or affirmative position on the question. Any Commissioner not voting in the negative is recorded as voting in the affirmative.

b. Abstention

A member may not abstain from voting except for a reason of conflict of interest. In such a situation, the member shall declare abstention at the beginning of the meeting at which the issue is to be voted upon. Unless challenged by another member and denied by a majority of members present, the declaration shall stand. An abstaining member shall not participate in deliberation of the issue.

7. Voting Procedure

It is preferred that each Commissioner votes in person. The Chair will not recognize proxies. The Commission may establish a process for remote participation by a Commissioner, but such participation shall be utilized only in unanticipated or emergency circumstances.

The Chair announces the results of the vote after the last Commissioner has voted. If any Commissioner questions the ruling of the Chair, a request may be made for a re-polling and each Commissioner will repeat his or her vote.

If the result of the tally is a tie vote, the motion fails and no action is taken as to the matter being moved.

III. Reconsideration; Actions to Rescind

Any action of the Commission may be reconsidered. However, only a Commissioner voting on the prevailing side may move to reconsider. If the motion to reconsider passes, then the matter is again before the Commission. The Commission may then alter, amend, rescind, or uphold its previous decision. The same question cannot be reconsidered a second time.

However, the Commission may at any time, on its own motion or upon motion of an interested party, upon notice, reopen any case after issuing an order.

IV. Commission Orders – Concurrences and Dissents

One or more Commissioners may author and publish a concurrence or a dissent to a Commission Order effecting a Commission decision in a particular Docket matter. The concurrence or dissent shall not be drafted by the same Commission staff attorney who is preparing the principal Order. Any concurrence or dissent must be published at the same time as the issuance of the principal Order and must be attached thereto.

V. Procedural Matters

The process of a Commission meeting shall be governed by the provisions of these sources in the following hierarchy:

Minnesota Statutes;
Minnesota Rules; and
These Meeting Procedures.

To the extent that the provisions of these sources do not resolve a procedural question, the Chair shall decide the question according to *Mason's Manual of Legislative Procedure*.

VI. Suspension of the Procedures

The Commission may suspend the procedures by a two-thirds vote of the Commissioners present.

Adopted: February 1, 1995

Amended and Adopted: September 18, 2014

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MINNESOTA PUBLIC UTILITIES COMMISSION

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Complainant,
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AFFIDAVIT OF
JOHN TUMA

Respondent,
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Agenda Meeting:
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PUC Docket:
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1. I am a Commissioner on the Minnesota Public Utilities Commission, a position I have held since February 2, 2015.
2. I have reviewed the ethics complaint filed on August 3, 2020 on behalf of the Association of Freeborn County Landowners.
3. I submit this Affidavit to provide a sworn factual statement to the Public Utilities Commission and the Office of Administrative Hearings regarding the factual allegations stated in the ethics complaint.
4. **Driving roads.** Shortly before the July 16, 2020 hearing, I did in fact drive the county and township roads where the turbines were to be placed to get a visual understanding of the landscape. I believe this extra work helps me better understand the impacts to a community and I do it with most all the major site permitting matters before the Commission. Given the fact that no turbines are to be located in London and Oakland townships, I did not visit those townships during my most recent visit, but when the matter was first before us several years ago I did drive through the townships of Oakland and London. I did not meet with any affected landowners, parties or anyone else in my drives to better understand the local impacts. I did not speak with anyone during these visits.

My wife did shop at the local quilt store while I drove around the neighborhood, but we did not mention why we were in the community to anyone.

5. **Communication with Freeborn County Commissioner.** I recently participated as a guest speaker at the June 1, 2020 Minnesota Rural Energy Board (MREB) to discuss the benefits of renewable energy projects to the economic well-being of the region and the state. MREB is a Joint Powers Board of 18 southwestern Minnesota counties that includes the County of Freeborn. The focus of the discussion I was invited to participate in was the problems with the federal tariffs for the development of large electric transmission projects within MISO. MREB is not a party to the Freeborn Wind proceeding. The Chair of the Board of Commissioners for Freeborn County, Commissioner Glen Mathiason, is a member of this joint powers board.
6. During the June 1, 2020 meeting of the MREB, Commissioner Mathiason announced that Freeborn County planned on using the future revenues from the Freeborn Wind Farm to provide backing for loans to communities and businesses as they prepare for a long recovery from the COVID pandemic. That was the source of information I was relying on in discussing the financial benefit to Freeborn County. I thought it was a credible source. I have no other information on the subject.
7. Some time later, I had a phone conversation with Commissioner Mathiason as a follow-up network chat to the June 1 meeting. To the best of my recollection, this conversation occurred in early July, prior to the July 16, 2020 agenda meeting, and after I learned that the Freeborn County road engineer was acting as the overseer of our permit's road conditions.

During this conversation, I thanked Commissioner Mathiason for the County's willingness to act as our partners on enforcing this and past permits. I also thanked Commissioner Mathiason for his work to find resolution regarding the transportation issues in the area. He did mention to me frustration with the process and the news that several turbines were moving to Iowa. He expressed to me in this conversation a desire to continue to see if the turbines could stay in Minnesota and willingness to see if the county could do more on the transportation issues through our permits. We also discussed local participation in permitting and how I have sought over the years to improve the permit language in the area of local participation. The conversation lasted around five minutes.

I did not view the conversation as an ex parte communication because Freeborn County is working with us to ensure the permit conditions are met by the permittee, and I knew that Freeborn County was not a party.

