

**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**

**AFFIDAVIT IN SUPPORT OF AFCL
COMPLAINT OF VIOLATION
OF COMMISSIONERS'
CODE OF CONDUCT**

**Agenda Meeting:
July 16, 2020**

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

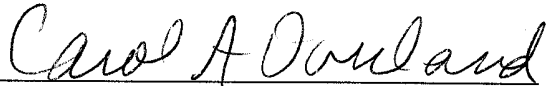
I, Carol A. Overland, after duly affirming, state and depose as follows:

1. I am an attorney licensed in good standing in the state of Minnesota, License No. 254617.
 2. I represent the Complainant Association of Freeborn County Landowners.
 3. Attached as Exhibit A is a true and correct copy of the Agenda of the Public Utilities Commission's meeting of July 16, 2020.
 4. Attached as Exhibit B is a true and correct copy of AFCL's Notice of Motion and Motion for Order to Show Cause, now pending before the Commission.
 5. Attached as Exhibit C is a true and correct copy of Xcel Energy's Response to AFCL's Motion for Order to Show Cause.
 6. Attached as Exhibit D is a true and correct copy of the "Subscription" notice of eFiling received on July 15, 2020, sent as "Briefing Papers" and containing Commissioner Tuma's "Decision Option" ("Motion").
-


7. Attached as Exhibit E is a true and correct copy of Commissioner Tuma's proposed "Decision Option," repeatedly referred to in the July 16, 2020 meeting by Commissioner Tuma as a "Motion."
8. Attached as Exhibit F is a true and correct copy of AFCL's July 15, 2020 letter requesting that Commissioner Tuma's "Decision Option" be removed.
9. Attached as Exhibit G is a true and correct copy of a letter sent by Dan Schleck on behalf of London and Oakland Township objecting to Commissioner Tuma's "Decision Option" amendment to permit authorizing permittee to access public roads.

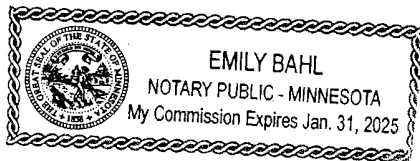
Further your affiant sayeth naught.

August 3, 2020


Carol A. Overland #254617
Attorney at Law
Legalelectric
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

Signed and sworn to before me this
3rd day of August, 2020.


Notary Public





Minnesota Public Utilities Commission

PUC Agenda Meeting

Thursday, July 16, 2020

9:15 AM

Online via WebEx

INTRODUCTION

DECISION ITEMS

1. [Details 2017-152](#)

** E002/WS-17-410

Northern States Power Company d/b/a Xcel Energy

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

What actions should the Commission take regarding the April 21, 2020 Request to Amend the Site Permit with a Special Condition? (PUC: **Kaluzniak**)

The following item will not be heard before 9:45 AM

2. [Details 2020-071](#)

* E,G999/M-19-505;

All Rate-Regulated Energy Utilities

E,G999/CI-12-1344

In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards;

In the Matter of a Commission Inquiry into Privacy Policies of Rate-Regulated Energy Utilities.

Should the Commission approve the Open Data Access Standards proposed by the Citizens Utility Board of Minnesota? (PUC: **O'Grady**)

ADJOURNMENT

* One star indicates agenda item is unusual but is not disputed.

** Two stars indicate a disputed item or significant legal or procedural issue to be resolved. (Ex Parte Rules apply)

Please note: For the complete record, please see eDockets

**BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

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

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

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 No. IP6946/WS-17-410

**ASSOCIATION OF FREEBORN COUNTY LANDOWNERS
MOTION FOR ORDER TO SHOW CAUSE AND HEARING**

NOTICE: Any opposition to the motion must be filed and served on the same list of persons within 14 days of service of the motion filing. Minn. R. 7829.0401, Subp. 1.

This Motion comes before the Commission on behalf of Association of Freeborn County Landowners, intervenors in the above-captioned Freeborn Wind Project siting docket, as provided by Minn. Stat. §216B.25; 216F.04(d), and 7854.1300. It has come to our attention that 17 of the 41 turbines in the Minnesota Freeborn Wind project have been removed from the site plan. Once again, the Freeborn Wind project, as applied for, as permitted, no longer exists – it is now a materially different project.

The Association of Freeborn County Landowners is requesting an Order to Show Cause, requesting an Order that Freeborn Wind disclose its revised plan and provide a stand-alone application for a permit amendment or show cause why such disclosure and a permit amendment

application should not be required. In addition, the Commission should refer the subsequent permit amendment application to the Office of Administrative Hearings for a contested case proceeding and an Administrative Law Judge Recommendation, necessary due to the material changes in the project and information and issues not addressed in the prior contested case.

Freeborn Wind and Northern States Power Minnesota (NSPM) first requested the Commission approve acquisition of the Freeborn Wind assets. Minn. Stat. §§ 216B.025, 216F.04(d) and Minn. R. 7854.1300, Subp. 4, and Site Permit III each authorize the Commission to address permit issues and modify, revoke, or suspend the Freeborn Wind permit, and that an interested party may make a motion for Commission action. Association of Freeborn County Landowners hereby make that Motion and request that the Commission issue an Order to Show Cause or a Show Cause letter regarding this significant reduction in turbines and why a permit amendment should not be required. AFCL further requests that the Commission to provide a hearing for Freeborn Wind, LLC/Northern States Power and AFCL the opportunity to be heard prior to Commission action. Should an amended permit application be required, AFCL requests that the Commission refer this matter of a permit amendment to the Office of Administrative Hearings for a hearing and recommendation to the Commission regarding a permit amendment.

There is now a need for Freeborn Wind to demonstrate that the project is feasible and constructible in consideration of the broad impacts of these changes on issues that were subject to the contested case proceeding – much has changed since the application and information provided by the applicant in the contested case proceeding, in the first Xcel application for permit amendment, in the thousand or so pages of “Compliance Filings,” and revised application filings. This must be done prior to proceeding with construction – once a project is built, adjustments and mitigation is difficult to accomplish and very costly, likely cost prohibitive.

The project now is no longer the project as presented by Freeborn Wind/Invenergy in its Application, testimony, and arguments; Xcel Energy/NSP in its application for permit amendment and many Compliance filings. It is no longer the project permitted by the Commission. As Northern States Power Company (NSPM) is requesting Commission approval of the acquisition of the Freeborn Wind project, this is the time to pause and gather the facts regarding this significantly altered project.

I. FACTUAL BASIS FOR MOTION FOR ORDER TO SHOW CAUSE

Freeborn Wind, LLC was acquired by NSPM on June 14, 2019, and “NSPM has assumed ownership of Freeborn Wind development assets, including the Freeborn Wind Farm.” See Notification of Acquisition, June 18, 2019 ([20196-1536762-02](#)). Northern States Power Minnesota applied for a permit amendment in August, 2019, requesting changes in turbines and layout:

Xcel seeks to amend the Freeborn Wind Project’s site permit to allow the use of a different combination of wind turbines and a different layout. The initial permit provides for installing 42 turbines, including 32 Vestas V116s and 10 Vestas 110s. Xcel now proposes to install only 41 turbines, replacing the 32 Vestas V116s with 31 Vestas V120s.

Commission Order, March 31, 2020¹. This permit amendment was granted by the Commission in its Order of March 31, 2020. Id. The site permit as amended contains a full site footprint map identifying the turbines, and five enlarged maps entitled “Turbine Layout Wind Access Buffers.”

The Xcel Energy amended site permit provides for installation of 41 turbines within the project footprint. Id.; Exhibit A, Turbine Layout Wind Access Buffers.

Upon information and belief, Xcel Energy/NSP has removed 17 turbines from the

¹

20203-161639-01	PUBLIC	17-410	<input type="checkbox"/>	WS	PUC	ORDER--ORDER DENYING AFCLS PETITIONS AND AMENDING SITE PERMIT	03/31/2020
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Minnesota Freeborn Wind footprint in London and Oakland township, perhaps due to inability to negotiate road agreements with London and Oakland townships or other reasons. On June 17, 2020, Dorene Hansen received the “haul route” map from Freeborn County’s Dave Rasmussen, depicting the same 24 turbines, not 41. Exhibit B, Rasmussen, Freeborn County email to Hansen with attachments. This was confirmed by County Commissioner Dan Belshan, who was given multiple copies of a “project map” on or about June 18, 2020 by Wanzek, Freeborn Wind’s contractor, a map that had many turbines missing. Exhibit C, Wanzek map. The missing turbines are the same on both maps, turbine numbers 3, 4, 16, 17, 28, 29, 30, 31, 32, 33, 34, 40, 41, 42, 43, 44, and 49. The reasons for removal of the turbines are unknown, as is confirmation of whether the turbines have indeed been removed from the project.

From the initial 42 turbines proposed, to the 41 turbines proposed by Xcel an approved in the Commission’s March 31, 2020 Order (Reconsideration denied June 12, 2020), removal of 17 turbines leaves just 24 turbines – slightly over 41% of the turbines have been removed. The loss of turbines is a surprise! The minutes of the May 13, 2020 preconstruction meeting, filed May 15, 2020, had no comments regarding a reduction of the number of turbines. There were several opportunities in the discussion, reliant on the “current layout,” to address changes to the plan. There was specific mention of “the current layout, in the meeting, per the summary, with no comments of any change:

- f. Section 5.2.12 Public Roads filed 3/11/2020. This filing identified roads to be used during construction and provided the road use agreement between Xcel Energy and Freeborn County, which was also signed by two townships. London and Oakland township negotiations are ongoing. 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. Xcel Energy will not proceed with any construction activities that require use of these roads until a resolution is reached with London and Oakland

Townships. Freeborn County is satisfied with Xcel Energy's coordination and is working on permitting matrix with Xcel Energy.

- j. Section 7.3 Wake Loss Studies filed 3/11/2020. Matt Langan confirmed that this filing reflects the current layout.
- m. Section 8.1 Wind Rights filed 8/20/2019 (Figure 4). Matt Langan confirmed that this filing incorporates the current layout and the amended permit issued on 3/31/2020.
- o. Section 5.4 Electrical Collector and Feeder Lines/10.3 Site Plans filed 3/11/2020 & 3/12/2020. Matt Langan confirmed that these reflect the current layout and have been provided to Freeborn County. Rich Davis stated that if changes are made to the site plans, EERA and Freeborn County must be notified 5 days prior to the changes occurring.

Exhibit D, Pre-Construction Meeting Summary, Xcel Compliance Filing, May 15, 2020. No reduction in turbines or changes in the site plan were disclosed.

There has been no notice or filing in the Freeborn Wind docket disclosing that changes in the size of the project and/or numbers and locations of turbines in Minnesota has changed.

II. LEGAL BASIS FOR MOTION FOR ORDER TO SHOW CAUSE

As the grantor of the permit, the Commission has the responsibility and broad authority to enforce the permit conditions, and the Commission has the express authority to modify, rescind, alter, suspend or revoke any permit. Under the provisions of Minn. Stat. §§ 216B.25, 216F.04(d) and Minn. R. 7854.1300, Subp. 4, and Section III of the Freeborn Wind Site Permit, the Commission has authority to rescind, alter, or amend the site permit or take remedial action.

FURTHER ACTION ON PREVIOUS ORDER.

The commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter, or amend any order fixing rates, tolls, charges, or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason. Any order rescinding, altering, amending, or reopening a prior order shall have the same effect as an original order.

Minn. Stat. §216B.25.

The commission may place conditions in a permit and may deny, modify, suspend, or revoke a permit.

Minn. Stat. §216F.04(d).

Further, the wind rules state that:

- The commission may amend a site permit for an LWECS at any time if the commission has good cause to do so.
- The commission may initiate action to consider amendment or revocation 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.

Minn. Rule. §7854.1300, Subp. 2, 4.

Removal of 17 of a project's 41 turbines, just over 40%, is a significant change. There are also provisions to revoke a site permit if "the applicant knowingly made a false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the commission's findings..." but again, it is not known the timing of a decision to remove the 17 apparently removed turbines and whether the removal of the 17 turbines was decided prior to the May 13, 2020 pre-construction meeting (though it is hard to imagine that such a decision could have been made so quickly, less than 30 days after the meeting). Significant changes are "good cause" to amend a permit. Changes without notice or disclosure to Commission at agenda meeting, or to Commission and Commerce staff at a pre-construction meeting are significant omissions, and each of the discussions based on the "plan" without disclosure and correction are false statements, and are "good cause" to revoke a permit.

A stand-alone permit amendment application is needed for the Freeborn Wind project. The Commission has established precedent in requiring stand-alone permit amendment applications, most importantly, with this Freeborn Wind project, when it was transferred to Xcel

Energy and Xcel changed the turbine specifications and locations and filed a stand-alone application for Permit Amendment on August 20, 2019.

In another very recent example, the Commission similarly required a stand-alone permit amendment application for the Three Waters wind project. Three Waters revealed in direct testimony that from 71 primary turbine locations and 8 alternate turbine locations, the numbers had decreased to 52 primary turbine locations and 18 alternate turbine locations, a significant reduction and change from its project footprint and plan. Upon reviewing that testimony, Commerce-EERA sent a letter to Three Waters' Senior Project Manager, stating:

*On June 3, 2020, Three Waters Wind Farm, LLC filed four direct testimony documents in eDockets, which include testimony from Eddie Duncan, Todd Mabee, and yourself. Within the filed direct testimony there is discussion of revisions to the Three Waters Wind Farm (Project), which vary from how the Project was presented in the Site Permit Application. EERA was notified via email from your council, Mr. Jeremy Duehr, on May 19, 2020, **the turbine layout had been decreased from 71 primary turbine locations and eight alternate turbine locations to 52 primary turbine locations and 18 alternate turbine locations.** It has also come to EERA's attention that a number of the locations are new turbines not proposed in the site permit application. With the exception of the May 19th email, and a phone conversation EERA had with Mr. Duehr on June 4th, **there is currently no stand-alone documentation in the Project docket to: identify how these proposed project amendments compare to the initial site permit application, provide reasoning for the revisions made, and identify how the revisions have or have not affected the proposed project impacts described in the initial site permit application.***

EERA believes a stand-alone amendment or addendum to the site permit application filed to the Project docket is necessary to provide clarity with respect to proposed project revisions, and to allow record development for the associated environmental review of the proposed Project.

***EERA recommends a site permit application amendment be filed to the Project docket. The amendment should describe the proposed project revisions, and address all components of the site permit application as they would be affected by the proposed project revisions.** EERA recognizes aspects of these changes have been addressed at a high level in the direct testimony filings, but we do not believe the overview in the testimony sufficiently addresses potential environmental impacts or allows for adequate record development. If the Company disagrees, EERA believes the Company should provide an explanation*

in the record.

Exhibit E, Davis, Commerce-EERA to Wengierski, Three Waters, June 8, 2020 (emphasis added)².

The Commission met and deliberated on June 11, 2020, decided that a stand alone permit amendment application must be filed, and specifically required:

3. Required the applicant to file a stand-alone amendment to the site permit application that provides clarity of projects changes. Applicant must serve the filing on other appropriate state agencies, local governments, and must make it available to the public to allow for further record development and to complete the associated environmental review of the proposed project. The amendment should describe in detail the proposed revisions to the project and address all components of the site permit application that are affected by the proposed changes.

4. Required the applicant to file updated maps with its amended filing that detail and clarify the locations of the turbines, wind rights setbacks, property only boundaries, and sensitive receptors (including residences and cemeteries). Applicant must work with EERA in the development of maps that provide the detail necessary to fully evaluate the human and environmental impacts of the proposed projects. When all necessary information and maps have been filed, EERA must make a filing reflecting its agreement that the materials have been made a part of the record. These materials must be provided to affected landowners, the project contact list, and the public for a minimum of 21 days before the public hearing(s) on the project is held.

Exhibit F, Commission Order, June 22, 2020³.

In the case of Freeborn Wind, the apparent removal of 17 turbines from the Minnesota side of the project is a material change. It is material in many aspects, and material issues are raised, including but not limited to the changed impacts of the project; lower production and lower tax benefits to the local government; whether removal of turbines is admission of

²

20206-163808-01	PUBLIC	19-576	<input type="checkbox"/>	WS	DOC-EERA	LETTER--EERA TO THREE WATERS - PROJECT APPLICATION AMENDMENT	06/08/2020
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³

20206-164181-01	PUBLIC	19-576	<input type="checkbox"/>	WS	PUC	ORDER	06/22/2020
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significant impacts to residents, landowners, business owners, and the environment; whether removal of turbines is due to inability to meet state noise standard or other siting considerations, cost/benefit analysis, setbacks generally and 3x5 rotor diameter setbacks, decommissioning, shadow flicker and noise modeling, etc.

Freeborn Wind must disclose the numbers and locations of turbines in its construction plan and file a stand-alone permit amendment, together with all the information required in an application. Minn. R. 7854.0500. Freeborn Wind must file a stand-alone permit amendment application as was ordered by the Commission for the Three Waters wind project, if in fact there are turbines that have been removed from the Minnesota project footprint.

III. REQUEST FOR ORDER TO SHOW CAUSE

The Association of Freeborn County Landowners is requesting an Order to Show Cause, an Order that Freeborn Wind disclose its revised plan and provide a stand-alone application for a permit amendment or show cause why such disclosure and a permit amendment application should not be required. In addition, the Commission should refer any subsequent permit amendment application to the Office of Administrative Hearings for a contested case proceeding and an Administrative Law Judge Recommendation, necessary due to the material changes in the project and information and issues not addressed in the prior contested case.

Respectfully submitted,



June 26, 2020

Carol A. Overland MN #254617
Attorney for AFCL
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(612) 227-8638
overland@legalelectric.org

**BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

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

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

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 No. IP6946/WS-17-410

**AFFIDAVIT OF OVERLAND IN SUPPORT OF ASSOCIATION OF FREEBORN
COUNTY LANDOWNERS' MOTION FOR ORDER TO SHOW CAUSE**

I, Carol A. Overland, after duly affirming, state and depose as follows:

1. I am an attorney licensed in good standing in the state of Minnesota, License No. 254617.
2. I represent the Association of Freeborn County Landowners, intervenor in the above-captioned wind siting docket filing the above-captioned Motion for Order to Show Cause.
3. Attached as Exhibit A is a true and correct copy of the Turbine Layout Wind Access Buffers as attached to the amended site permit issued by the Commission on March 31, 2020, showing the permitted 41 turbine project layout.
4. Attached as Exhibit B is a true and correct copy of an email forwarded by Doreene Hansen from Dave Rasmussen, Freeborn County, and the attached Freeborn Wind project maps, showing a 24 turbine layout, with 17 turbines no longer on the map.
5. Attached as Exhibit C is a true and correct copy of the Freeborn Wind project map provided by Wanzek to Freeborn County Commissioner Dan Belshan.
6. Attached as Exhibit D is a true and correct copy Xcel Energy's Summary of the May 13, 2020 Pre-Construction Meeting (selected), filed in eDockets on May 15, 2020, showing a 24 turbine layout, with 17 turbines no longer on the map.
7. Attached as Exhibit E is a true and correct copy of the June 8 ,2020 letter to Three Waters' Mark Wengierski regarding necessity of a stand-alone site permit amendment

application following filing of testimony by Three Waters revealing material changes in project, including fewer turbines and siting changes.

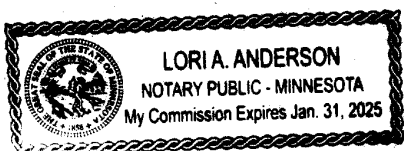
8. Attached as Exhibit F is a true and correct copy of the first two pages of the Public Utilities Commission's June 22, 2020 Order in the Three Waters wind project site permit docket that includes the following Order points:

3. Required the applicant to file a stand-alone amendment to the site permit application that provides clarity of projects changes. Applicant must serve the filing on other appropriate state agencies, local governments, and must make it available to the public to allow for further record development and to complete the associated environmental review of the proposed project. The amendment should describe in detail the proposed revisions to the project and address all components of the site permit application that are affected by the proposed changes.

4. Required the applicant to file updated maps with its amended filing that detail and clarify the locations of the turbines, wind rights setbacks, property only boundaries, and sensitive receptors (including residences and cemeteries). Applicant must work with EERA in the development of maps that provide the detail necessary to fully evaluate the human and environmental impacts of the proposed projects. When all necessary information and maps have been filed, EERA must make a filing reflecting its agreement that the materials have been made a part of the record. These materials must be provided to affected landowners, the project contact list, and the public for a minimum of 21 days before the public hearing(s) on the project is held.

Further your affiant sayeth naught.

June 26, 2020



Signed and affirmed before me this
26th day of June, 2020.

Lori A. Anderson
Notary Public

Carol A. Overland
Carol A. Overland MN #254617
Attorney for AFCL
Legalelectric – Overland Law Office
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Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

AFCL Exhibit B

Hansen forward of Freeborn Co/Rasmussen email & Project Map

AFCL Exhibit B - Hansen Forward of Freeborn Co Rasmussen email & Project Map

Subject: Fwd: haul map
From: Dorenne Hansen <dhansen078@gmail.com>
Date: 6/22/2020, 5:53 PM
To: Carol Overland <overland@legalectric.org>

Dorenne Hansen
Glenville MN

Begin forwarded message:

From: "Dave L. Rasmussen" <dave.rasmussen@co.freeborn.mn.us>
Date: June 17, 2020 at 2:54:27 PM CDT
To: "dhansen078@gmail.com" <dhansen078@gmail.com>

Dorenne

Here are the roads for deliveries.

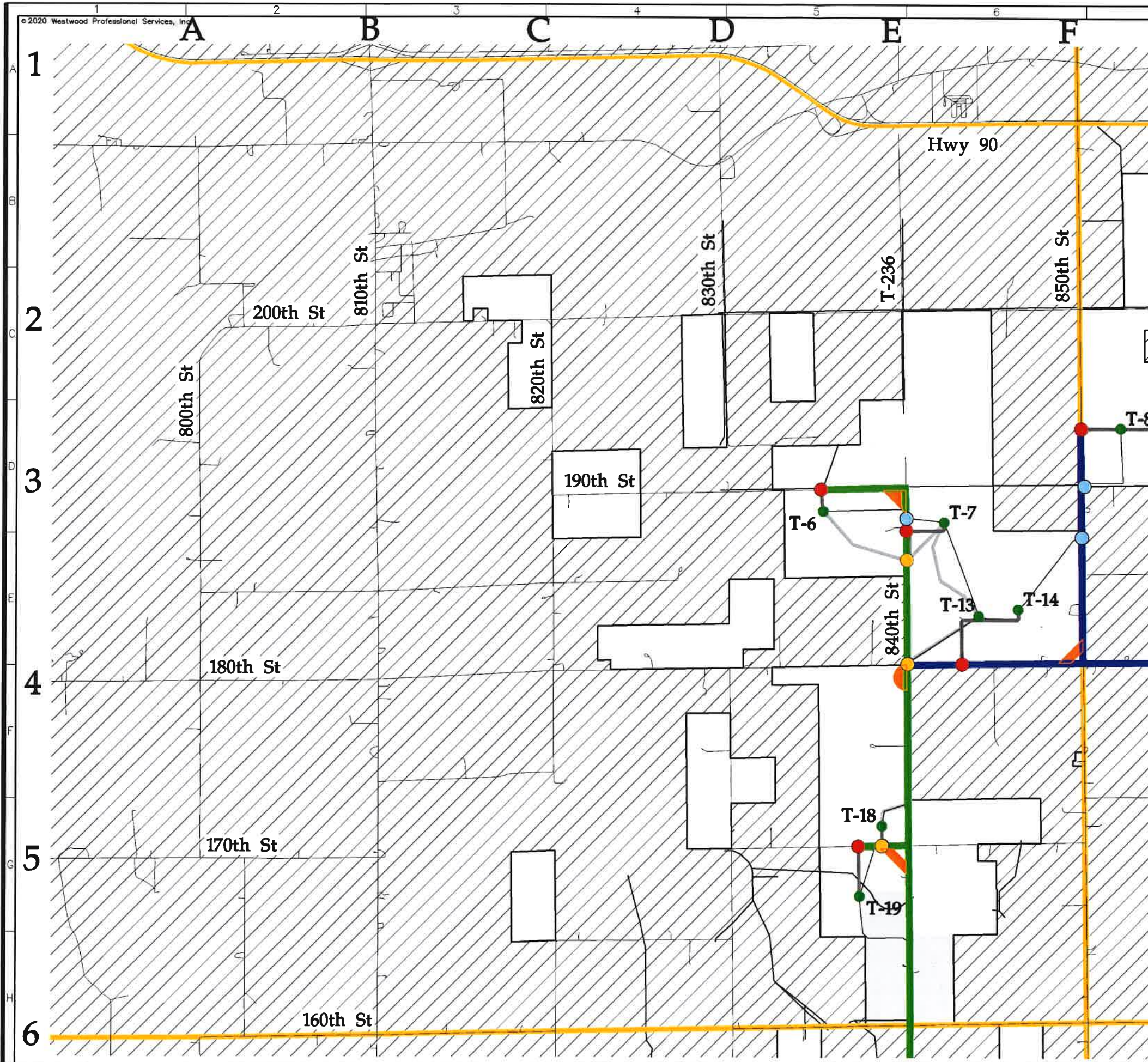
Dave Rasmussen
Freeborn County Highway Department
3300 Bridge Ave.
Work - 507-377-5188
Cell - 507-320-8085

— Attachments: —

1559_001.pdf

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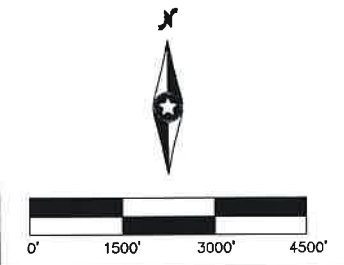
- LEGEND:**
- PROPOSED TURBINE LOCATION
 - T-XX** PROPOSED TURBINE NUMBER
 - PROPOSED ACCESS ROADS
 - PROPOSED CRANE PATH
 - PROPOSED UNDERGROUND COLLECTION
 - PROPOSED OVERHEAD TRANSMISSION
 - EXISTING ROAD
 - US HIGHWAY
 - TOWNSHIP LINE
 - STATE LINE
 - GRAVEL DELIVERY ROAD
 - BITUMINOUS DELIVERY ROAD
 - PROJECT BOUNDARY
 - ▲ RADIUS EXTENSION
 - PROPOSED UTILITY CROSSING
 - PROPOSED CRANE CROSSING
 - PROPOSED ACCESS ROAD ENTRANCE
 - PROPOSED T-LINE ENTRANCE

Westwood
 Phone (952) 937-5150 12701 Whitewater Drive, Suite 4100
 Fax (952) 937-5822 Minneapolis, MN 55343
 Toll Free (888) 937-5150 westwoodps.com
 Westwood Professional Services, Inc.

Design: _____
 Checked: _____
 Drawn: _____
 As-Built Drawing: _____

Revision #	DATE	DESCRIPTION

Prepared for: _____



**Freeborn
Wind Project**
 Freeborn County, Minnesota

Road Agreement Exhibit -
Hayward Township

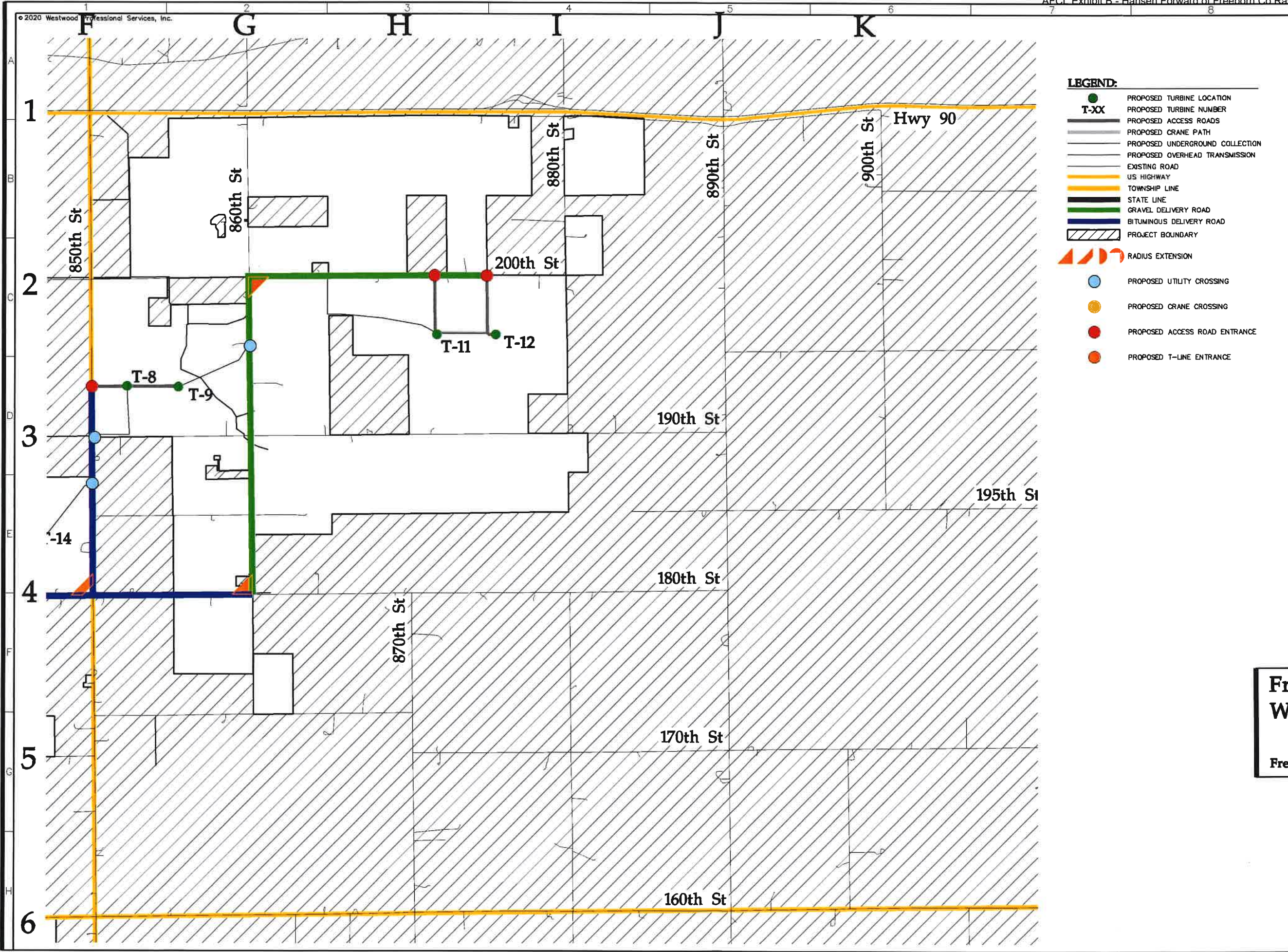
**PRELIMINARY
NOT FOR CONSTRUCTION**

Date: 4/20/20
 Sheet: 1 OF 4

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Westwood

Phone (952) 937-6150 12701 Whitewater Drive, Suite #100
 Fax (952) 937-5822 Minneapolis, MN 55543
 Toll Free (888) 937-5150 www.westwoodps.com
 Westwood Professional Services, Inc.

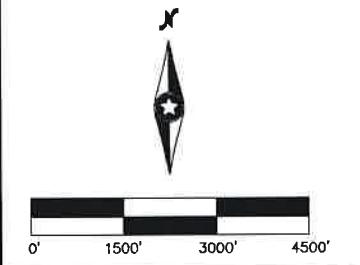


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 - PROPOSED T-LINE ENTRANCE

Design: _____
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 As-Built Drawing: _____

Revision #	DATE	DESCRIPTION

Prepared for: _____

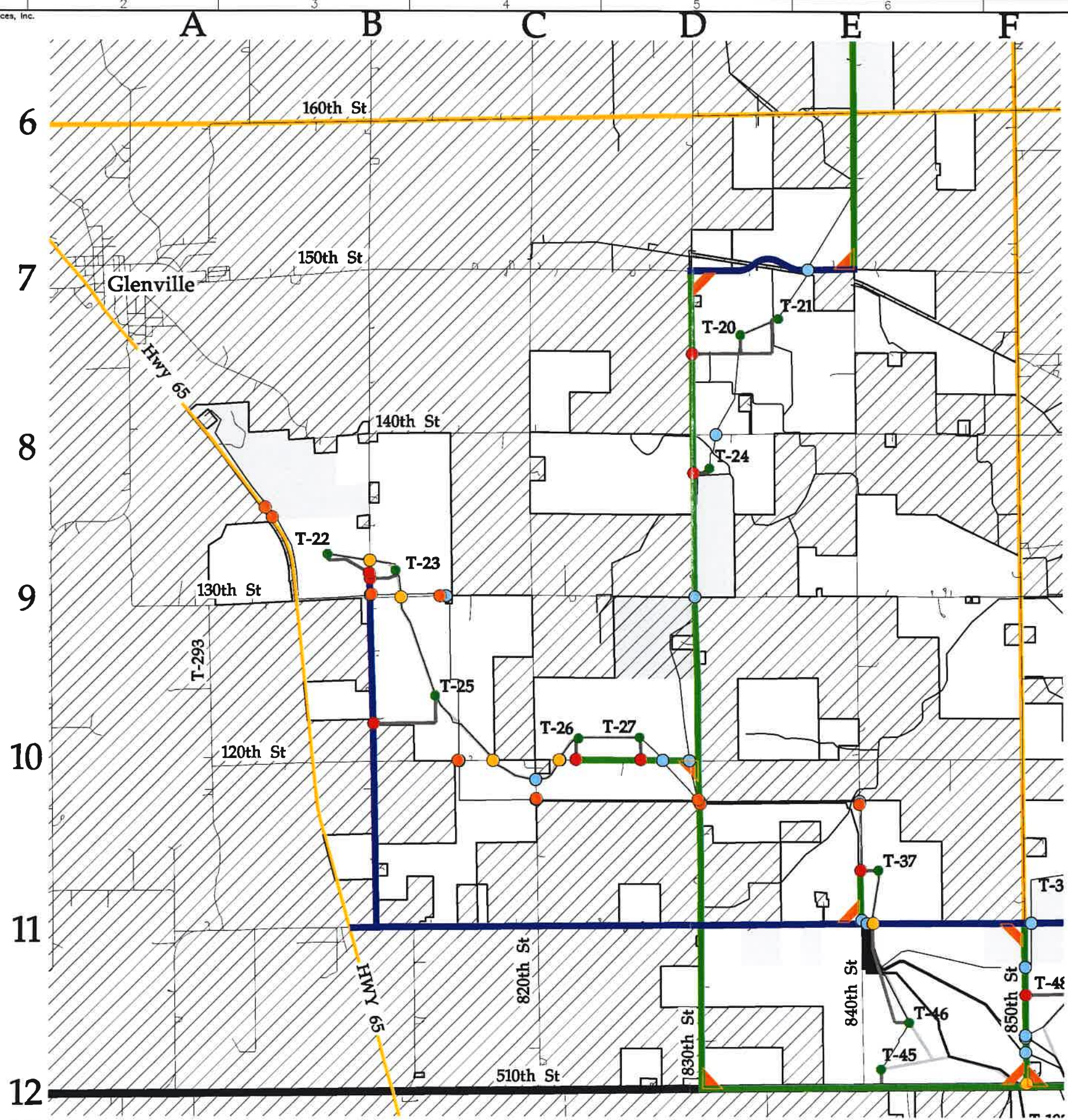


Freeborn Wind Project
 Freeborn County, Minnesota

Road Agreement Exhibit - Oakland Township

PRELIMINARY
 NOT FOR CONSTRUCTION

Date: 4/20/20
 Sheet: 2 OF 4
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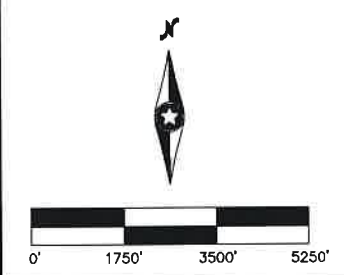


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 - PROPOSED CRANE CROSSING
 - PROPOSED ACCESS ROAD ENTRANCE
 - PROPOSED T-LINE ENTRANCE

Designed: _____
 Checked: _____
 Drawn: _____
 As-Built Drawing: _____

Revision #	DATE	DESCRIPTION

Prepared for: _____

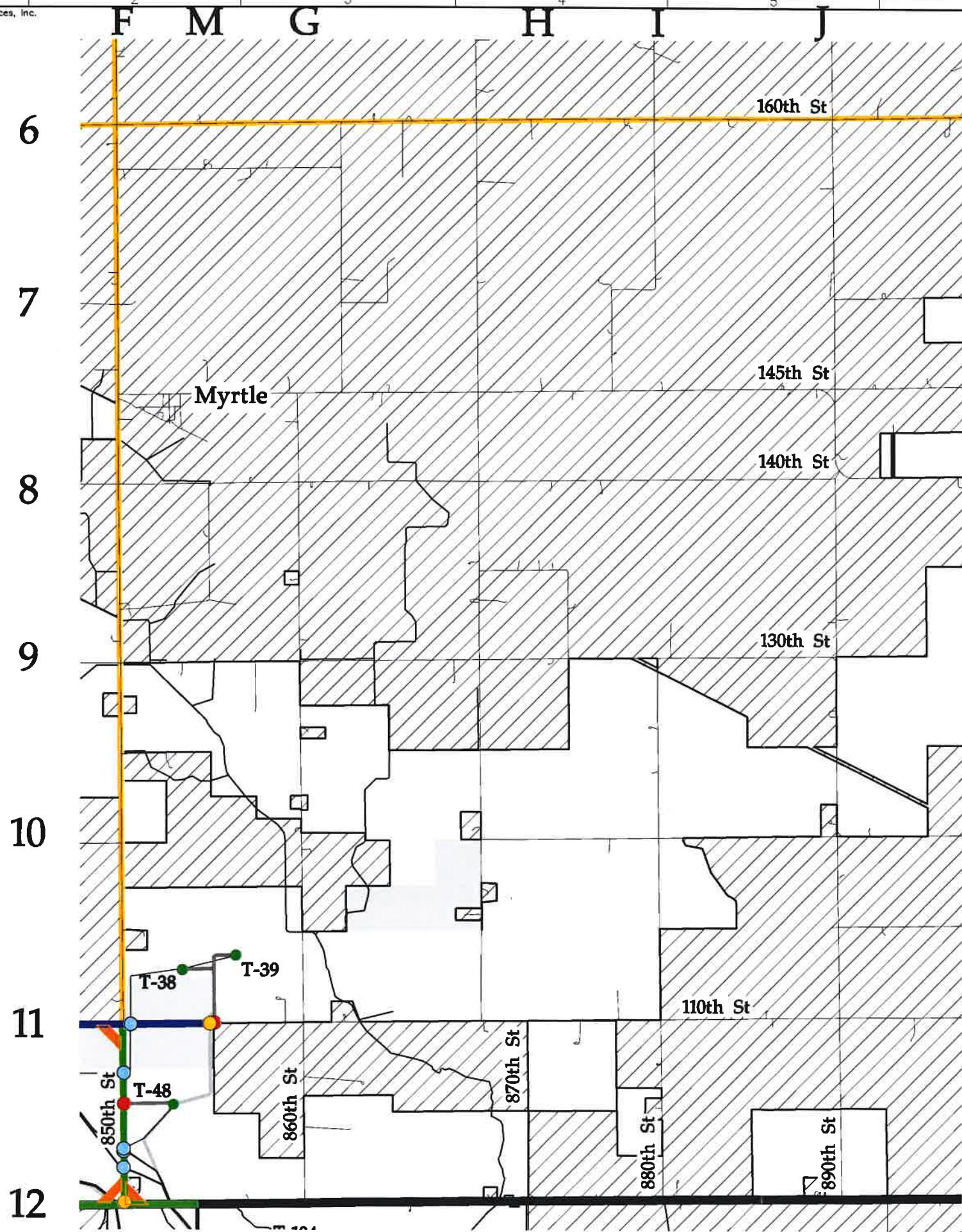


**Freeborn
Wind Project**
 Freeborn County, Minnesota

Road Agreement Exhibit -
Shell Rock Township

**PRELIMINARY
NOT FOR CONSTRUCTION**

© 2020 Westwood Professional Services, Inc.



LEGEND:

- PROPOSED TURBINE LOCATION
- T-XX** PROPOSED TURBINE NUMBER
- PROPOSED ACCESS ROADS
- PROPOSED CRANE PATH
- PROPOSED UNDERGROUND COLLECTION
- PROPOSED OVERHEAD TRANSMISSION
- EXISTING ROAD
- US HIGHWAY
- TOWNSHIP LINE
- STATE LINE
- GRAVEL DELIVERY ROAD
- BITUMINOUS DELIVERY ROAD
- PROJECT BOUNDARY
- RADIUS EXTENSION
- PROPOSED UTILITY CROSSING
- PROPOSED CRANE CROSSING
- PROPOSED ACCESS ROAD ENTRANCE
- PROPOSED T-LINE ENTRANCE

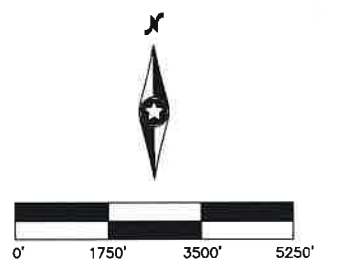
Westwood

Phone (652) 837-5150 12701 Whitewater Drive, Suite #200
 Fax (952) 937-5822 Minneapolis, MN 55343
 Toll Free (888) 937-5150 westwoodps.com
 Westwood Professional Services, Inc.

Design: _____
 Check: _____
 Draw: _____
 As-Built Drawing: _____
 Revisions:

#	DATE	DESCRIPTION

Prepared for: _____



**Freeborn
Wind Project**
Freeborn County, Minnesota

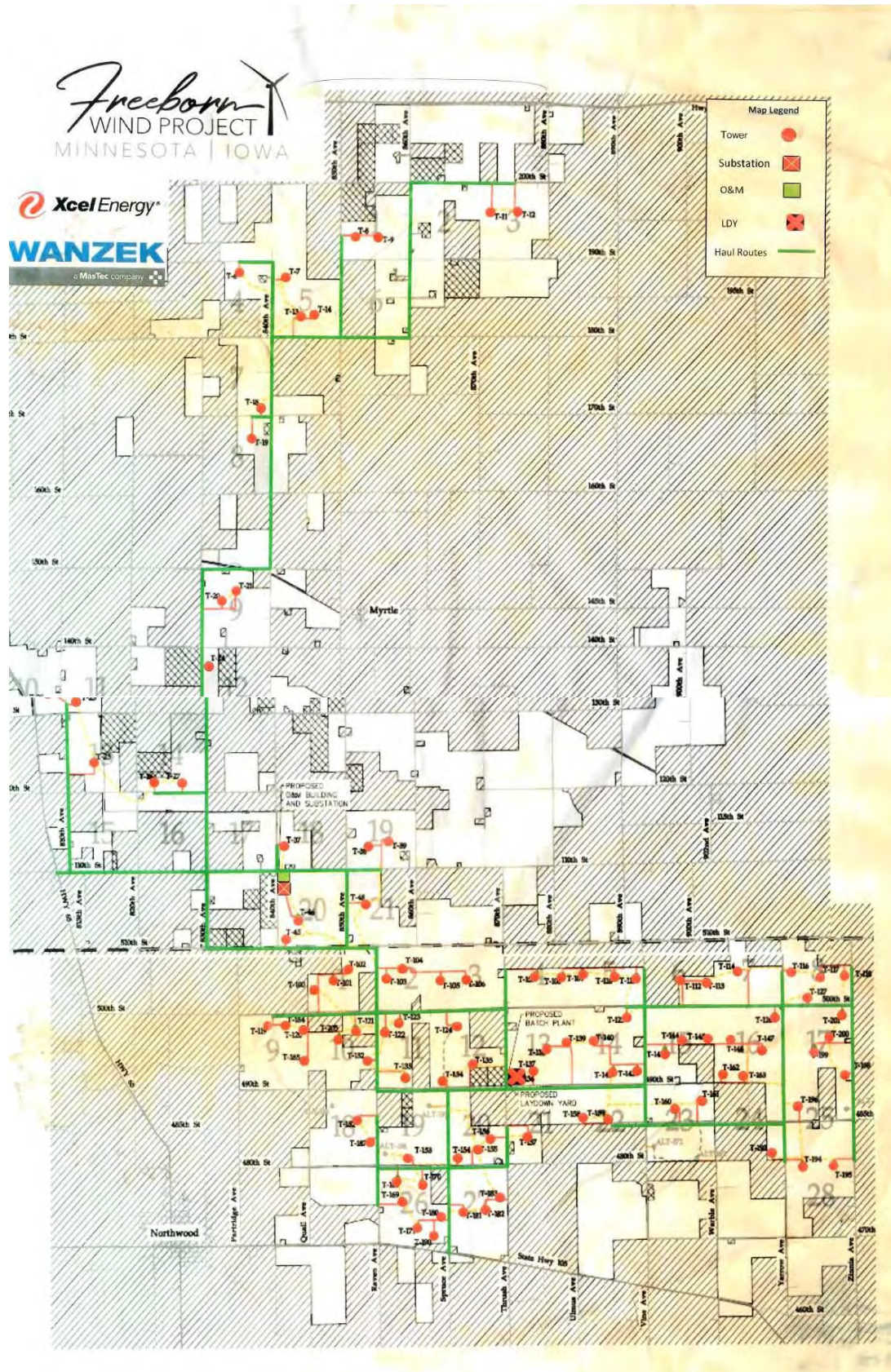
Road Agreement Exhibit -
London Township

**PRELIMINARY
NOT FOR CONSTRUCTION**

Date: 4/20/20
 Sheet: 4 OF 4

AFCL Exhibit C

Wanzek Freeborn Wind Project Map
via Freeborn County Commissioner Dan Belshan



AFCL Exhibit D

May 13, 2020 Pre-Construction Mtg Summary (selected)

Xcel Compliance Filing – 20205-163233-01

**Wednesday, May 13, 2020
10 a.m.**

**PRE-CONSTRUCTION MEETING AGENDA
SECOND PHASE OF CONSTRUCTION**

**FREEBORN WIND FARM
PUC DOCKET NO. IP-6946/WS-17-410**

Meeting Location
Virtual Meeting via Skype

I. Introductions (DOC-EERA, Commission Staff, Xcel Energy Staff, Contractors, County Staff, others.)

- a. DOC - EERA
 - a. Rich Davis
 - b. Louise Miltich
- b. Xcel Energy
 - a. Matt Langan
 - b. Amanuel Haile
 - c. Ahmed Issahak
 - d. Aaron Thooft
 - e. Chris Hogg
 - f. Pat Flowers
 - g. Patti Leaf
 - h. Kate Schindler
 - i. Trevor Seely
 - j. Roland Sulzer
- c. PUC
 - a. Mike Kaluzniak – PUC Energy Facilities Staff
- d. Freeborn County
 - a. Sue Miller
 - b. Dan Kenison
 - c. Dave Rasmussen
 - d. Kim Erickson
- e. Shell Rock Township
 - a. Gary Richter
- f. Other
 - a. Mike Hankard – Xcel Energy noise consultant

- g. Rich Davis: Opened the meeting by stating that members of the public may have been forwarded the invite. Outlined goal of reviewing compliance filings submitted to the record. No open public comment period now, as this is not a public meeting nor is it an environmental review meeting. Environmental review for general construction activities covered by this meeting has been completed during the site permit process. Open meeting laws do not apply to this meeting. There is no final decision being made and no Commission decision makers attended.

II. State Role in Permitting LWECS (DOC-EERA and Commission Staff)

- a. Rich Davis: EERA staff provides review and comment throughout the site permitting process for any LWECS facility. At this point, EERA reviews pre-construction compliance documents that come from the permittee to make sure that permit pre-construction conditions are met before recommending to the Commission that construction can be allowed to proceed. Reviewing the March 31, 2020 version of the site permit in this meeting.
- b. Mike Kaluzniak: March 31, 2020 site permit amendment order issued. The pre-construction meeting was put on hold to allow some administrative items to be addressed first.

III. Review of Permit Compliance Filings Submitted to Date (DOC-EERA)

- a. Section 4.7 - Native Prairie filed 2/10/2020. The Native Prairie Protection Plan was developed in coordination with DNR and EERA.
- b. Section 4.12 Aviation filed 3/11/2020 filing. This required notification to airports in proximity was completed and documented in filing.
- c. Section 5.2.1 Field Representative filed 11/8/2019. This is the same representative as previously filed; Matt Langan noted that the phone number listed is project-specific and allows others to respond to inquiries/concerns if the primary contact is unavailable. Sean Lawler is temporarily unavailable, but Trevor Seely is filling Sean's role in the meantime.
- d. Section 5.2.6 Soil Erosion and Sediment Control filed 11/8/2019. Matt Langan confirmed that the Stormwater Pollution Prevention Plan filed is still current.
- e. Section 5.2.10 Invasive Species filed 3/11/2020.
- f. Section 5.2.12 Public Roads filed 3/11/2020. This filing identified roads to be used during construction and provided the road use agreement between Xcel Energy and Freeborn County, which was also signed by two townships. London and Oakland township negotiations are ongoing. 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. Xcel Energy will not proceed with any construction activities that require use of these roads until a resolution is reached with London and Oakland

- Townships. Freeborn County is satisfied with Xcel Energy's coordination and is working on permitting matrix with Xcel Energy.
- g. Section 5.2.16 Interference filed 3/11/2020. This filing deals with telecommunications, over-the-air television, and other potential interference issues. Matt Langan confirmed that these documents are final.
 - h. Section 5.5.2 Other Required Permits and Regulations filed 3/11/2020. Xcel Energy provided updates to EERA on 5/12/2020; this information (including further status updates and dates permits acquired) will be e-filed by Xcel Energy. Matt Langan stated that most permits have been obtained or are close to issuance. Specific construction activities will not commence without necessary approvals.
 - i. Section 7.1 Biological and Natural Resources Inventories filed 2/24/2020. Rich Davis stated that most of these documents were filed much earlier as part of the site permit application.
 - j. Section 7.3 Wake Loss Studies filed 3/11/2020. Matt Langan confirmed that this filing reflects the current layout.
 - k. Section 7.4.2 Post-Construction Noise Monitoring filed 3/11/2020. The post-construction noise monitoring protocol was developed in coordination with EERA. Rich Davis stated that if anything needs to be changed (not anticipated), the protocol needs to be refiled to docket. Matt Langan pointed out that the protocol is in alignment with the DOC's July 2019 guidance document. Rich Davis confirmed that the protocol matches this guidance.
 - l. Section 7.5.1 Avian and Bat Protection Plan filed 3/11/2020. Rich Davis stated that the ABPP is a living document and will be updated as situations warrant (high fatalities, change in risk, etc.). There is an annual audit in coordination with EERA & DNR that allows changes to be incorporated.
 - m. Section 8.1 Wind Rights filed 8/20/2019 (Figure 4). Matt Langan confirmed that this filing incorporates the current layout and the amended permit issued on 3/31/2020.
 - n. Section 9.0 Complaint Procedures filed 12/6/2019. That provided updated contact information.
 - o. Section 5.4 Electrical Collector and Feeder Lines/10.3 Site Plans filed 3/11/2020 & 3/12/2020. Matt Langan confirmed that these reflect the current layout and have been provided to Freeborn County. Rich Davis stated that if changes are made to the site plans, EERA and Freeborn County must be notified 5 days prior to the changes occurring.
 - p. Section 10.10 Emergency Response filed 11/8/2019. This version of the Emergency Response Plan was also used for first phase of construction. This plan will be updated for operation of the facility.
 - q. Section 10.1 Pre-Construction Meeting. Summary notes will be e-filed along with updated permit information so EERA can provide recommendations to Commission.

IV. Review and Discussion of Other Site Permit Conditions

- a. No comments or questions from attendees.

V. Construction Schedule (Xcel Staff)

- a. Matt Langan stated that Phase I of the project was authorized in late 2019 included the O&M building and substation. Xcel Energy received authorization to construction transmission line in March 2020.
- b. Amanuel Haile provided further detail on the construction schedule. The target construction start on the wind farm is 6/1/2020 based on expected PUC authorization. Xcel Energy would have liked to start construction in late May 2020. Borings and collection are the top priority; this work has started in IA. MN construction right now includes the O&M building (storm shelter, foundations, gravel). Transmission line activities are scheduled to start in several days. Aaron Thooft, project engineer, confirmed. Matt Langan stated that authorization would be required by 5/29/2020 to allow 6/1/2020 start. Sue Miller requested that the permit matrix and road use calculations be completed, and an on-site meeting take place prior to 5/29/2020. Amanuel Haile stated that road use calculations are nearly complete, and everything should be wrapped up by 5/29/2020. Sue Miller requested a detailed construction schedule. Amanuel Haile said that Wanzek provides a 3-week look-ahead document that will be provided to Freeborn County.

VI. Other Topics

- a. Rich Davis reiterated that Xcel Energy will file meeting notes and downstream permit information, then he will provide his compliance review and recommendations to the PUC. The PUC completes their review and then issues the authorization to begin construction. Matt Langan stated that Xcel Energy will file notes and other permit information by the end of the week.
- b. Rich Davis mentioned Section 10.4 Status Report requirement; Xcel Energy will need to file monthly status reports on construction.
- c. No comments or questions from other attendees; meeting adjourned.

AFCL Exhibit E

Letter EERA-Davis to Three Waters

June 8, 2020 – 20206-163808-01

June 8, 2020

Mark Wengierski, Senior Project Manager
Three Waters Wind Farm, LLC, c/o Scout Clean Energy
4865 Sterling Drive, Suite 200
Boulder, CO 80301

Sent via email: mark@scoutcleanenergy.com

RE: Proposed Project Revisions and Updates
Three Waters Wind Farm, Jackson County, Minnesota
Docket No. IP-7002/WS-19-576

Dear Mr. Wengierski,

On June 3, 2020, Three Waters Wind Farm, LLC filed four direct testimony documents in eDockets, which include testimony from Eddie Duncan, Todd Mabee, and yourself. Within the filed direct testimony there is discussion of revisions to the Three Waters Wind Farm (Project), which vary from how the Project was presented in the Site Permit Application. EERA was notified via email from your council, Mr. Jeremy Duehr, on May 19, 2020, the turbine layout had been decreased from 71 primary turbine locations and eight alternate turbine locations to 52 primary turbine locations and 18 alternate turbine locations. It has also come to EERA's attention that a number of the locations are new turbines not proposed in the site permit application. With the exception of the May 19th email, and a phone conversation EERA had with Mr. Duehr on June 4th, there is currently no stand-alone documentation in the Project docket to: identify how these proposed project amendments compare to the initial site permit application, provide reasoning for the revisions made, and identify how the revisions have or have not affected the proposed project impacts described in the initial site permit application.

EERA believes a stand-alone amendment or addendum to the site permit application filed to the Project docket is necessary to provide clarity with respect to proposed project revisions, and to allow record development for the associated environmental review of the proposed Project.

EERA recommends a site permit application amendment be filed to the Project docket. The amendment should describe the proposed project revisions, and address all components of the site permit application as they would be affected by the proposed project revisions. EERA recognizes aspects of these changes have been addressed at a high level in the direct testimony

filings, but we do not believe the overview in the testimony sufficiently addresses potential environmental impacts or allows for adequate record development. If the Company disagrees, EERA believes the Company should provide an explanation in the record.

Sincerely,

A handwritten signature in black ink that reads "Richard Davis". The signature is written in a cursive, flowing style.

Richard Davis
Environmental Review Manager

Cc: Louise Miltich, DOC-EERA
Cezar Panait, Commission – EFP
Bret Eknes, Commission - EFP
Jeremy Duehr, Fredrikson & Byron, P.A.
Haley Waller Pitts, Fredrikson & Byron, P.A.

AFCL Exhibit F

Three Waters Order (selected)

June 22, 2020

20206-164181-01

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

Mark Wengierski, Senior Project Manager
Three Waters Wind Farm, LLC,
c/o Scout Clean Energy
4865 Sterling Drive, Suite 200
Boulder, CO 80301

SERVICE DATE: June 22, 2020
DOCKET NO. IP-7002/WS-19-576

In the Matter of the Application of Three Waters Wind, LLC for a Site Permit for the up to 201 MW Large Wind Energy Conversion System in Jackson County, Minnesota

The above-entitled matter was considered by the Commission on June 11, 2020 and the following disposition made:

- 1. Approved the issuance of the draft site permit as attached and as initially proposed by the Department of Commerce, including changes proposed by staff (such as the cover page; Section 2: Project Description; Section 2.2 Project Location; Section 3 Designated Site; and the site maps attached to the permit) to account for the project design changes as per revised information included in the applicant's June 3 direct testimony, and the EERA's June 8 letter with recommendations.**
- 2. Authorized Commission staff to modify the draft site permit to correct typographical and formatting errors, improve consistency, and ensure agreement with the Commission's final order in this matter.**
- 3. Required the applicant to file a stand-alone amendment to the site permit application that provides clarity of projects changes. Applicant must serve the filing on other appropriate state agencies, local governments, and must make it available to the public to allow for further record development and to complete the associated environmental review of the proposed project. The amendment should describe in detail the proposed revisions to the project and address all components of the site permit application that are affected by the proposed changes.**
- 4. Required the applicant to file updated maps with its amended filing that detail and clarify the locations of the turbines, wind rights setbacks, property only boundaries, and sensitive receptors (including residences and cemeteries). Applicant must work with EERA in the development of maps that provide the detail necessary to fully evaluate the human and environmental impacts of the proposed projects. When all**

necessary information and maps have been filed, EERA must make a filing reflecting its agreement that the materials have been made a part of the record. These materials must be provided to affected landowners, the project contact list, and the public for a minimum of 21 days before the public hearing(s) on the project is held.

The Commission agrees with and adopts the recommendations of the Department of Commerce, which are attached and hereby incorporated into the Order.¹ This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

¹ To address the applicant's recently proposed project changes, the Commission will require changes to the draft site permit, consistent with ordering paragraph 1 above. The Commission will also require the applicant to amend the permit application and file updated maps, followed by a public comment period, consistent with ordering paragraphs 3 and 4 above. Consistent with this decision and the record, the Commission omits the draft site permit from the Department's May 11 comments.



414 Nicollet Mall
Minneapolis, MN 55401

July 10, 2020

—Via Electronic Filing—

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

RE: RESPONSE IN OPPOSITION TO AFCL'S MOTION FOR
ORDER TO SHOW CAUSE AND HEARING
FREEBORN WIND ENERGY PROJECT
DOCKET NO. IP-6946/WS-17-410

Dear Mr. Seuffert:

Northern States Power Company, doing business as Xcel Energy, submits this Response in Opposition to the June 26, 2020 Motion for Order to Show Cause and Hearing filed by the Association of Freeborn County Landowners (AFCL).

As an initial matter, we note that AFCL is correct; the Company will be moving 17 turbines originally planned to be built in Freeborn County to Worth County, Iowa. Included with this Response as Attachment A is an Amended Site Plan reflecting the layout of the portion of the project the Company will be constructing in Minnesota. This was not the Company's preferred course for the Freeborn Wind Energy project. In order to ensure the project is constructed efficiently and at the lowest cost for our customers, and able to obtain the full value of applicable wind production tax credits (PTCs), however, we believe this shift is necessary and prudent.

We do not believe this decision requires a permit amendment—at least not at this time. The Site Permit “authorize[s]” the Company “to construct and operate an *up to* 84 megawatt nameplate capacity Large Wind Energy Conversion System in Freeborn County, Minnesota,” (emphasis added) subject to compliance with the conditions of the permit. We still intend to construct a large wind project in Freeborn County that will have no more than 84 megawatts of nameplate capacity, and we still intend to comply with the conditions of the permit. Moving these 17 turbines to Iowa (and removing them from the Site Plan) will have no impact on the rest of the permitted project, and, therefore, AFCL's motion seeking an amended Site Permit should be denied.

A. Background

As noted in the Pre-Construction Meeting Notes, filed in this Docket on May 15, 2020, the Company has had difficulties obtaining agreements with the Townships of Oakland and London for the use of township roads to construct certain turbines we originally had planned to include in the project. These difficulties began with the original developer of the project, Freeborn Wind Energy LLC, who applied for a site permit for the Freeborn Wind Energy Project on June 14, 2017. Among other things, the Site Permit Application noted that the developer would need to obtain “oversize/overweight permits for township roads.”

Not coincidentally, shortly thereafter in 2017, London and Oakland townships adopted ordinances requiring environmental review, pursuant to the Minnesota Environmental Policy Act, Minn. Stat. § 116D.01, *et seq.*, in connection with the issuance of any oversize/overweight permit (the Ordinances).¹ Under these substantively identical Ordinances, the township boards are designated as the “Responsible Governmental Units” for conducting the environmental review, and any violation of the Ordinances is subject to punishment by “a fine not exceeding \$500 or imprisonment for 90 days or both.”

As Freeborn Wind Energy LLC pursued approval of, and amendments to, the Site Permit, it also pursued related approvals from other governmental units, including London and Oakland townships. Although Freeborn Wind Energy LLC believed the Ordinances were preempted by Minn. Stat. 216F.07, and did not apply to the project, it attempted to negotiate for road use agreements with the townships, and even sought a permit from the townships, sending all the environmental information included in the Site Permit Application for the townships’ review. Despite these good faith attempts, the townships largely refused to engage in discussions and refused to consider the application for an oversize/overweight permit.

In contrast to this obstructive behavior from London and Oakland townships, Freeborn Wind Energy LLC (and subsequently the Company) entered into an extensive Development Agreement with Freeborn County, as well as Hayward and Shell Rock townships. We filed this Development Agreement with the Commission on March 11, 2020, pursuant to Section 5.2.12 of the Site Permit. Among other things, the Development Agreement includes detailed provisions regarding the use, repair, and restoration of the county and those townships’ roads.

¹ The London Township Town Board filed a copy of its Ordinance in this Docket on October 9, 2017.

When the Company acquired the Freeborn Wind Energy project, we reached out to London and Oakland townships in May and June 2019, and attempted to discuss obtaining a similar agreement on use of township roads, including oversize/overweight vehicle use of the roads. In a letter filed in this Docket on July 22, 2019, however, the townships' attorney accused the Company and Freeborn Wind Energy LLC of "harassment," and stated the Company was required to "abide by" the townships' Ordinances to obtain an oversize/overweight permit, notwithstanding Freeborn Wind Energy LLC's prior attempt to do just that.

Given the tenor of this and other communications, we did not believe we could work constructively to obtain necessary permits or agreements with the townships until after the Company's Site Permit amendment application was approved. Following the Commission's vote on December 19, 2019, to amend the Site Permit, the Company again reached out to the townships in January 2020 to discuss obtaining access point, crossing, and oversize/overweight permits. The townships refused to meet in person to discuss the permits, but requested additional information from the Company, which we supplied. Since providing the requested information at the end of February 2020, however, we have not heard from the townships or their attorney regarding the road use permits. Although we remained hopeful that they would reengage in discussions, including up until the time of our pre-construction meeting with the Department of Commerce—Energy Environmental Review & Analysis division (DOC-EERA) and Commission, it has become clear we will not be able to reach an arrangement regarding road use in time to pursue construction of 17 turbines originally planned to be located in the townships.

Based on the townships' overall reticence regarding road-use discussions, in parallel with our attempts to obtain permits or agreements, we developed an alternate plan to develop the full nameplate capacity of the Freeborn Wind Energy project as economically as possible. Specifically, we obtained options for alternate turbine locations in Worth County, Iowa—where the majority of the project already was slated to be constructed. As we developed this backup plan, over the past few months, we notified DOC-EERA of the alternative, even though we continued to hope we would not need it. Unfortunately, by the end of June, due to the lack of engagement from the townships, we were forced to switch to our alternate plans, and on June 24, 2020, the Company reached out to DOC-EERA, Commission staff, and Freeborn County officials to inform them of our decision. On June 29, 2020, we reached out to affected landowners to discuss the same with them.

In our discussions with DOC-EERA and Commission staff, we agreed that, at this time, the appropriate procedural approach to documenting this change in plans was through a revised Site Plan, which we provide as Attachment A, rather than a Site Permit Amendment.

B. Moving Turbines to Iowa Provides Certainty and Best Preserves Benefits for Our Customers

As noted above, moving the 17 turbines in question to Iowa is not the Company's preferred course of action, but given the circumstances, it is the best path forward for the Company and our customers. Going this direction facilitates the Company securing 100% of the value of the PTCs for the project; it allows the project to be constructed efficiently; it aligns with the conditions of the Site Permit; and it moves turbines from a community that was antagonistic to the project to one that is receptive to the project. For all these reasons, we ultimately determined this shift was in the best interest of all parties.

One of the aspects of the Freeborn Wind Energy project that makes it particularly valuable for customers is that, because work on the project began before 2017, it qualifies for 100% PTCs, the value of which the Company will flow back to customers through the Renewable Energy Standard Rider. The current value of PTCs is 2.5 cents per kWh of energy produced by a wind farm during its first ten years of operation. Until just over one month ago, in order to qualify under the continuity safe harbor to secure 100% of this PTC value, the project needed to be placed into service by December 31, 2020. Missing this deadline could have extreme consequences, potentially including the loss of 20% of the PTCs. For a 200 MW wind farm, like the Freeborn Wind Energy project, that could amount to over \$40,000,000 in lost PTCs.

On May 27, 2020, the IRS issued Notice 2020-41, extending the deadline by one year to address supply chain issues related to the COVID-19 pandemic.² Although this extension gives the Company some ability to extend construction into 2021, work on the Freeborn Wind Energy project was planned to occur in 2020 well before the extension was contemplated or even the impacts of COVID-19 were realized. The BOP contractor, Wanzek, began civil construction on the project in April 2020, and delaying any portion of that work for a substantial period of time would add notable cost increases to the project. For example, the contractor would be unable to construct foundations and collection lines for those turbines and would need to delay work and return at an uncertain date. This uncertainty with the schedule

² <https://www.irs.gov/pub/irs-drop/n-20-41.pdf>

would expose the project to additional costs for labor efficiency losses, and it also is possible that the contractor could not guarantee labor resources would return in time to support schedule to meet even the extended PTC deadlines. To compound this issue, there likely would be significant cost impacts and additional schedule uncertainty related to crane resources needed to erect the turbines, which could not be used as efficiently as if the entire facility were constructed at the same time. Cranes needed to construct these turbines would need to walk past the turbine locations and then be broken down to reach other portions of the project, resulting in additional labor, time, and uncertainty in crane availability.

Based on these timing and scheduling pressures, even though we do not believe the townships' positions are reasonable, fighting with them over road use permits added too much scheduling uncertainty. Similarly, based on the townships' prior actions, attempting to comply with the Ordinances at best would have added substantial delay to the project. As a result, we chose the only option that provided us with certainty as to our ability to meet the 100% PTC deadline and efficiently construct the entire project: moving the 17 turbines in question to Iowa.

In addition to these benefits, this shift in turbine locations moves them from communities that are openly antagonistic to the project to one that is enthusiastic about it. Wind turbines are a permitted use in Worth County's Agricultural District. Furthermore, we were met with support from both Worth County landowners and the Board of Supervisors upon presentation of the alternate site layout. We believe, therefore, that this move is in the best interest of our customers.

C. Removing Turbines from the Site Plan Does Not Require a Site Permit Amendment

Although we appreciate that this shift in turbine locations is a significant change in the project, we do not believe it requires an amendment to the Site Permit at this time. We have complied, and intend to continue complying, with all terms of the Site Permit as they relate to the remaining turbines we intend to construct in Minnesota. The only difference is that 17 turbines originally planned to be built in Minnesota no longer will be located in the state. As a result, there is no need to amend the Site Permit, which is—as its name implies—a permit authorizing (not an injunction requiring) the construction of up to 84 MW of wind generation.

To the contrary, this shift in turbine locations is consistent with the Site Permit. Section 5.2.12 of the Site Permit requires the Company to “make satisfactory arrangements with the appropriate state, county, or township governmental body

having jurisdiction over roads to be used for construction of the project, for maintenance and repair of roads that may be subject to increased impacts due to transportation of equipment and project components” prior to using such roads. Section 5.5.2 of the Site Permit requires the Company to “obtain all required permits for the project and comply with the conditions of those permits unless those permits conflict with or are preempted by federal or state permits and regulations” and notes that a “list of the permits known to be required is included in the permit application.” Section 11.1-1 of the Site Permit Application, submitted on June 14, 2017, identifies the following “known or potentially required permits and approvals for the Project” to be obtained from London and Oakland townships: ROW permits, crossing permits, driveway permits for access roads, oversize/overweight permits for township roads.” Absent satisfactory arrangements with the townships, construction of the 17 turbines was not authorized by the Site Permit.

Additionally, the shift in turbine locations to Iowa is consistent with Section 3.1 of the Site Permit, which states that “[a]ny modification to the location of a wind turbine and associated facility depicted in the preliminary layout shall be done in such a manner to have comparable overall human and environmental impacts and shall be specifically identified in the site plan pursuant to Section 10.3.” Because the shift in turbines only removes previously approved turbines from their locations in Minnesota and does not change anything else related to the planned and permitted construction in Minnesota, it effectively minimizes any such impacts. There is, moreover, no need to resubmit “all the information required in an application” under “Minn. R. 7854.0500” for those turbines left in Minnesota because such information would be redundant of what already is in the record.

Once construction of the project is completed, it may be appropriate to amend or modify the Site Permit to reflect the contours of the constructed project. Such a modification would be appropriate under Minn. R. 7854.1300, subp. 1, which states “[o]nce construction of an LWECS is completed, the permittee shall advise the commission of the completion of the project and the commission shall amend the site permit to specifically define the area authorized for the LWECS...” and Section 12.1 of the Site Permit, which allows site boundaries to be modified following completion of construction, “to represent the actual site required by the Permittee to operate the Project authorized by this permit.” At this time, however, an amendment is unnecessary, and we therefore request that AFCL’s motion be denied.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. Please contact me at (612) 330-6064 or bria.e.shea@xcelenergy.com, or Jennifer

Roesler at (612) 330-1925 or jennifer.roesler@xcelenergy.com, if you have any questions regarding this filing.

Sincerely,

/s/

BRIA SHEA
DIRECTOR, REGULATORY AND STRATEGIC ANALYSIS

c: Service List

AFCL Exhibit D – eDockets Subscription email

Subject:IP6946/WS-17-410: Document Subscription Notification

Date:Wed, 15 Jul 2020 13:06:45 -0500

From:eService.admin@state.mn.us

To:overland@legalelectric.org

You have subscribed to receive documents in the following matter. A new document has been submitted.

Submission Number: 20207-164936

Docket Number: IP6946/WS-17-410

Docket Type: Wind Power Plant Siting

Docket Description: In the Matter of the Application of Freeborn Wind Energy LLC for a Site Permit for the Freeborn Wind Project.

Document Type: Briefing Papers

Received Date: 07/15/2020

On behalf of: PUC

[Click here to view the document](#)

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

Docket No. IP-6946/WS-17-410

Commissioner Tuma moves the following decision option:

E. Take some other action deemed appropriate.

2. The Executive Secretary shall provide notice and request comment as to whether the Commission should 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, upon agreement of the Freeborn County, appoint the Freeborn County Engineer to act as the agent and representative regarding the appropriate arrangements for access road requirements, construction use of roads, maintenance and repair due to the increased impacts from transportation of equipment and project components over the township roads in the Townships of Oakland and London for the duration of the project.

The Permittee may continue in all other respects with preconstruction and construction activities under the permit as if there were the establishment of satisfactory arrangements for road mitigations in Oakland and London Townships through this amendment process so long as there is no activity on the affected township roads until the conclusion of this amendment process.

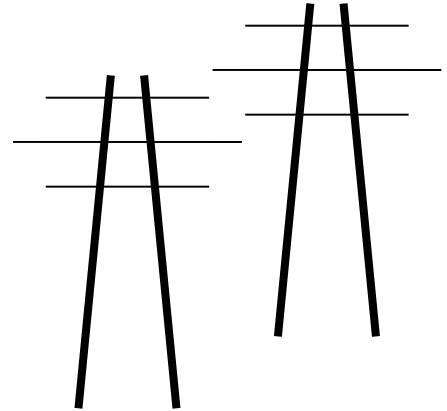
Legalelectric, Inc.

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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” E2 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

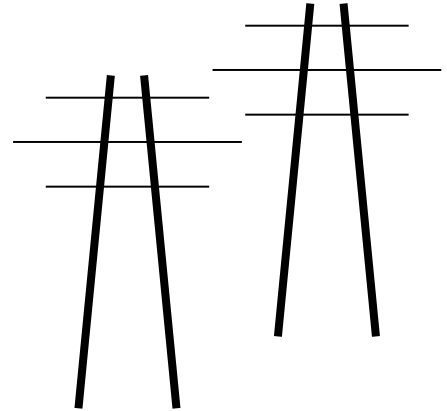
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July 15, 2020

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
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St Paul, MN 55101



Filed via eDockets only

RE: COMMISSIONER TUMA'S "DECISION OPTION" WAS NOT SERVED
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 Commissioner Tuma's "Decision Option" apparently was filed, but not served. I received the following "Document Subscription Notification" at 1:06 p.m.:

Subject: IP6946/WS-17-410: Document Subscription Notification
From: <eService.admin@state.mn.us>
Date: 7/15/2020, 1:06 PM
To: <overland@legalelectric.org>

You have subscribed to receive documents in the following matter. A new document has been submitted.
Submission Number: 20207-164936
Docket Number: IP6946/WS-17-410
Docket Type: Wind Power Plant Siting
Docket Description: In the Matter of the Application of Freeborn Wind Energy LLC for a Site Permit for the Freeborn Wind Project.
Document Type: Briefing Papers
Received Date: 07/15/2020
On behalf of: PUC
[Click here to view the document](#)

A "Subscription Notification" is not "Official Document Service."

Very truly yours,

Carol A. Overland
Attorney at Law

July 15, 2020

Via Electronic Mail and Docket Filing

Minnesota Public Utilities Commission
c/o Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 530
St. Paul, MN 55101

**Re: Letter from London Township and Oakland Township Objecting to
Amendment to Permit Authorizing Permittee to Access Public Roads for
Freeborn Wind Farm in Freeborn County in Freeborn County
DOCKET NO. IP-6949/WS-17-410**

Dear Honorable Members of the Public Utilities Commission:

This firm represents London and Oakland Townships in Minnesota (collectively, the (“Townships”), both of which have a large portion of the turbines permitted by as part of this project. On behalf of the Townships, we request that this letter be made part of Docket IP-6949/WS-17-410 and reviewed by the Commission as part of its evaluation of the commissioner Tuma’s motion to consider Amendment to Permit Authorizing Permittee to Access Public Roads for Freeborn Wind Farm in Freeborn County in Freeborn County.

Commissioner Tuma’s request goes far beyond he power and authority granted to MPUC in Minn. Stat. § 216F.07. This request would seek to expand its powers and go well beyond the Commission’s power and authority contrary to the clear language of the statute which reads “A permit under this chapter is the only site approval required for the **location** of an LWECs. The site permit supersedes and preempts **all zoning, building, or land use rules**, regulations, or ordinances adopted by regional, county, local, and special purpose governments.” This request is an attempt to interfere in the sovereignty and regulatory powers of the Township.

The power of administrative agency in Minnesota is limited to “the authority delegated by law and in full compliance with its duties and obligations.¹” Minn. Stat § 216F.07 specifically in clear, unambiguous language grants the PUC the limited power to preempt and supersede local zoning, land use and building codes for the LOCATION alone. The statute **does not** go so far as to give the PUC the power to supersede and preempt all local use of their police powers and ordinances, in addition to location, for an LWECs project.

There is no Minnesota or Federal statute that grants the MPUC authority to preempt all other regulation of non-locational matters for LWECs. In support of this

¹ Minn. Stat. 14.05, Subd. 1

conclusion, the Minnesota Office of Administrative Hearings found that Chapter 216F is unambiguous and its plain meaning should be used when interpreting the interaction between MPUC Permit conditions and local ordinances².

Since Minn. Stat. § 216F.07 is not ambiguous and the power granted to the MPUC for preemption is limited to the **location** of LWECs only the MPUC should reject Commissioner Tuma's request because it has no power to intrude into the regulatory sphere of local road use in violation of Minnesota statute.

If the Commission insists in proceeding in this fashion, the Townships will fight this attempted power grab with all administrative and judicial rights available to it. The mere consideration of this request by MPUC signals a disturbing policy by the Commission which will lead to a "slippery slope" which threatens local regulatory powers of all Counties, Cities and Townships in Minnesota.

We look forward to your response and please contact me if you have any questions.

Sincerely,

MESSERLI KRAMER P.A.



Daniel Schleck

- C. Clients
 - Minnesota Association of Townships
 - League of Minnesota Cities
 - Minnesota County Insurance Trust

² See *In the Matter of the Application of AWA Goodhue Wind, LLC*, OAH-3-2500-21662-2 (Apr. 29, 2011).