

timing of construction, cost of materials, and labor.¹⁴⁴ Total costs are summarized below in Table 1:¹⁴⁵ * Total includes the cost to construct the entire HVTL, not just the route segment. (chart makes no sense, apples to oranges comparison)

78. The permittee for the Project is Freeborn Wind Energy LLC. Freeborn Wind is currently owned by Invenergy, LLC. Should the Commission issue a route permit for the project, Freeborn Wind will be transferred from Invenergy to Xcel Energy, and Freeborn Wind, LLC would own and operate the transmission line. Freeborn Wind, LLC, is not a public service corporation.¹⁴⁷

87. The Gold Route would have the most impact on non-participating landowners because it would require placing the Project on non-participants' land. Impacts to nonparticipating landowners along the Gold routing options are unavoidable, and will be long-term and significant, as they would be with any route.¹⁵⁷

88. The Purple Overbuild Route would also require constructing the Project on nonparticipants' land, and impacts are unavoidable and will be long-term and significant.¹⁵⁸

89. The Orange and Purple Parallel routes have the least impact on nonparticipating Landowners, only because there are fewer non-participating landowners. The impacts will be the same, unavoidable, long-term, and significant, no matter what route is chosen. Freeborn Wind has, through voluntary agreements, obtained the rights necessary to construct the Project along the Teal, Orange, and Purple Parallel routes on participants' land except for a road crossing associated with 830 Avenue.¹⁵⁹ Freeborn Wind is seeking a utility permit from Freeborn County for this road crossing to keep the transmission line entirely within participating landowner property or public ROW.¹⁶⁰ As an LLC, Freeborn Wind does not have the power of eminent domain.

95. Freeborn Wind committed to take steps to comply with all applicable Minnesota noise standards.¹⁷⁰ For example, noise from intermittent and infrequent construction activities will be mitigated by the distance of the activity from a receptor (e.g., construction activities will not be near residences, farmsteads, etc.), using sound control devices on vehicles and equipment, conducting construction activities during daylight hours as much as possible during normal business hours, and not running vehicles and equipment when not needed.¹⁷¹ When exceedences occur, the activity must stop. Compliance with noise standards shall be a condition of the permit.

99. Aesthetic impacts are associated with residents viewing the HVTL from their homes, residents traveling in the project area, recreationalists along the Shell Rock River and Shell Rock Water Trail, and nonresidents traveling through the Project Area. Residents and recreationalists generally have a higher sensitivity to potential aesthetic impacts than temporary observers.¹⁷⁹

120. The results of these studies can be summarized, generally, as follows:

- Over time, there is a consistent pattern with about half of the studies

finding negative property value effects and half finding none.

- When effects have been found, they tend to be small; almost always less than 10 percent and usually in the range of three percent to six percent. A 3 or 6 or 10% impact on a typical \$150-300k home with acreage would not be “small” to that homeowner, and a 3 or 6 or 10% impact on a \$1.2 million dollar farm is significant amount of money. This loss would also represent a loss in property tax revenue.

- Where effects are found, they decay rapidly as distance to the lines increases and usually disappear at about 200 feet to 300 feet.

- Two studies investigating the behavior of the effect over time find that, where there are effects, they tended to dissipate over time.²¹⁸

122. There is no evidence in the record that shows a property value guarantee is or is not warranted for the Project.

134. Magnetic-Electric fields may interfere with implantable electromechanical medical devices, such as pacemakers, defibrillators, neurostimulators, and insulin pumps.²³¹ However, interference from magnetic fields in pacemakers is not observed until 2,000 mG—a field strength greater than that associated with transmission lines.²³²

152. Prior to construction, Freeborn Wind will coordinate with the applicable local and state road jurisdictional authorities to obtain the necessary permits for road access and public road ROW use.²⁵⁵ For example, Freeborn Wind is seeking a utility permit from Freeborn County for the crossing of County Road 108/830th Avenue at one-quarter mile south of 120th Street, where Freeborn Wind has proposed a narrowed ROW in order to maintain the ROW for the Project within land owned by participating landowners and within public road ROW.²⁵⁶ As an LLC, Freeborn Wind does not have the power of eminent domain. There is no evidence in the record demonstrating that Freeborn Wind has had multiple constructive discussions with Freeborn County Staff and Shell Rock Township officials, and there has been no notice of any meetings with Shell Rock Township officials.⁴and is confident a thorough Three Part Agreement will be reached that will address all of these issues.²⁵⁷

242. The Gold Route and Purple Route co-locate the Project with existing transmission lines for their entire lengths.⁴⁰³ The Teal Route and Orange Route do not share ROW with an existing transmission line route; however, a significant portion 21% of these routes follow existing roadways.⁴⁰⁴ Agricultural field boundaries are not existing transportation, pipeline, and electrical transmission right of way.

246. The evidence on the record does not demonstrates that it will be most cost-effective to collect all energy generated in Minnesota and Iowa and transmit to the Minnesota project substation and to- construct the Project along the Teal, Orange, or Purple Parallel routes to the new Glenworth substation in Minnesota.⁴⁰⁸ Absent a

⁴ There are only 3 voting supervisors, and any meeting of more than two requires publication of notice under Open Meeting Law.

Minnesota wind siting permit, there is no evidence in the record regarding cost effectiveness of this transmission project.

255. The PPSA presumes irreversible and irretrievable commitments of resources, such as land for the project lost for production, a permanent change in vista with transmission lines, and establishment of a transmission corridor where there once was none. Project will require minimal commitments of resources that are irreversible and irretrievable. Only Others include construction resources, such as concrete, steel, and hydrocarbon fuels, will be irreversibly and irretrievably committed to this Project. During construction, vehicles necessary for these activities would be deployed on site and would need to travel to and from the construction area, consuming hydrocarbon fuels. Other resources would be used in pole construction, pole placement, and other construction activities.⁴¹⁷

~~262. As set forth above, because the Teal, Orange, and Purple Parallel routes make use of existing ROW and generally compare favorably in terms of cost to the route alternatives, the record demonstrates that the Teal, Orange, and Purple Parallel routes best meet Minnesota's route selection criteria. Based on consideration of all routing factors and the Applicant's preference, the Orange Route combined with the Purple Parallel Route is the best route for the Project. (invalid due to weight given to "the Applicant's preference.") (There is no analysis in this summary section of the PEER and Minn. Stat. §216E.03, Subd. 7(e) non-proliferation factor.)~~

266. The EA process is the alternative environmental review approved for high voltage transmission lines.⁴²⁰ The Commission is required by the rule to determine the "completeness" of the EA.⁴²¹ An EA is complete if it and the record address the issues and alternatives identified in the Scoping Decision. Adequacy of the EA should also be determined for MEPA compliance. Minn. Stat. §116D.04.

CONCLUSIONS OF LAW

12. The evidence on the record demonstrates that, in addition to the Special Route Permit Conditions referenced above, the general Route Permit conditions are appropriate for the Project, including a requirement of compliance with MPCA noise standards.

~~The Commission should **GRANT** a Route Permit with the general and special route permit conditions for a 161 kV HVTL along the Purple Parallel Route based on Applicant's preference and with Applicant's proposed modification to narrow the route by 130th Street to match the Orange Route in this area. (invalid due to weight and consideration of "Applicant's preference.")~~

~~In the alternative, the Commission should grant a Route Permit for the Orange Route with the general and special route permit conditions based on the Applicant's preference. (invalid due to consideration and weight of "Applicant's preference.")~~

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange
Dan Lipschultz
Matt Schuerger
Katie Sieben
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

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

In the Matter of the Application of Freeborn
Wind Energy LLC for a Route Permit for the
Freeborn Wind Transmission Line in
Freeborn County

PUC Docket No. IP-6946/TL-17-322

AFFIDAVIT OF CAROL A. OVERLAND
IN SUPPORT OF ASSOCIATION OF FREEBORN COUNTY LANDOWNERS
PETITION FOR RECONSIDERATION

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

Carol A. Overland, after duly affirming on oath, states and deposes as follows:

1. I am an attorney in good standing, licensed in the State of Minnesota, Lic. No. 254617, and have extensive experience in utility regulatory proceedings in many venues.

2. I am representing the Association of Freeborn County Landowners in both of the above-captioned proceedings.

3. I offer the Exhibits below in support of Association of Freeborn County Landowners' Petition for Reconsideration in the siting docket and the transmission docket.

INFORMATION THE COMMISSION IGNORED – IRREGULARITIES AND ILLEGALITIES – LAND RIGHTS MUST BE INDEPENDENTLY VERIFIED

4. Attached as Exhibit A is a true and correct copy of Robert B. Knutson's notarized eDockets filing dated August 10, 2018.
5. Attached as Exhibit B is a true and correct copy of Carol A. Overland's eDockets filing dated July 24, 2018. In that filing is a copy of the Order revoking the notary Commission of Thomas Spitzer dated June 26, 2018.

IRREGULARITIES – LAND RIGHTS MUST BE INDEPENDENTLY VERIFIED

6. Attached as Exhibit C is a true and correct copy of three easements and easement amendments signed by William Glen Gillen, identified as "a single person." The initial Grant of Easement was dated July 24, 2015; the First Amendment of Easement was dated July 31, 2017; and the Second Amendment of Easement was dated April 10, 2018. Each of these three agreements was signed by William Glen Gillen as "a single person." The July 31, 2017 and April 10, 2018 agreements were notarized by Thomas Spitzer, prior to revocation of his notary commission.
7. Attached as Exhibit D is a true and correct copy of William Glen Gillen's marriage license dated September 21, 2013. A search of District Court files does not show any record of a divorce for William Glen Gillen's since that time.

NEW INFORMATION

8. A Data Practices Act to Freeborn County revealed that County staff had been seeking and receiving advice from Larry Hartman, Commerce, about utility status of Freeborn Wind and power of eminent domain, and the use by Freeborn Wind of county road easements for transmission. Attached as Exhibit E is a true and correct copy of emails received in response to the AFCL Data Practices Act request to Freeborn County.
9. The Freeborn County Data Practices Act responsive emails that discuss use of the County Road for the transmission easement, over non-participant's land established a trail to Larry Hartman of Commerce, and AFCL sent a Data Practices Act Request to the Dept. of Commerce for any documents in its possession regarding the Freeborn Wind transmission easement and county road easement, and the utility status of Freeborn Wind and the power of eminent domain. Attached as Exhibit F is a true and correct copy of selected emails referencing easements and right of way, utility status, and discussions

10. Other directly relevant new information has surfaced since the Commission's meeting. On October 10, 2018, the World Health Organization released its Environmental Noise Guidelines. Attached as Exhibit G is a true and correct copy of selected pages of the World Health Organization report, those related to wind noise, pages 77-86. The full report is available online at: <http://www.euro.who.int/en/media-centre/sections/press-releases/2018/press-information-note-on-the-launch-of-the-who-environmental-noise-guidelines-for-the-european-region>

Further your affiant sayeth naught.

Dated: January 8th, 2019



Carol A. Overland MN Lic. 254617
Attorney for Association of Freeborn
County Landowners
Legalelectric
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

Signed and sworn to before me this
8th day of January, 2019



Notary Public



Exhibit A

eFiled Notarized Letter from Robert B. Knutsen

Commerce Enforcement Complaint re: Invenergy's Thomas Spitzer

August 10, 2018 – eDockets # 20188-145697-01

EXECPTIONS TO RECOMMENDATION

August 10, 2018

PUC Docket 17-322

PUC Docket 17-410

Dear Public Utility Commissioners,

I am the person who filed a complaint against Thomas Spitzer for falsely notarizing my signature. When I was not present, he notarized a signature as mine that was not mine.

He was removed from his office as a notary in the state of Minnesota and he was fined by the MN Commerce Department.

I ask the following of the PUC:

- Review all leases notarized by Thomas Spitzer;
- Declare my lease invalid because I didn't sign it and it's fraudulent;
- Require Freeborn Wind to renew leases with all parties with a lease notarized by Thomas Spitzer; and
- Deny the transmission and the siting permit because of fraudulent land acquisition practices.

Robert B Knutson
76901 150th St
Albert Lea MN 56007
507-402-1250
Lknutson@deskmedia.com

Robert B Knutson
8-10-18

Subscribed to and sworn before me
this 10 day of August 2018
by Robert B Knutson

Brenda S Bangs

Notary
State of MN
Freeborn County

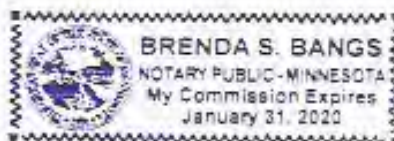


Exhibit B

eFiled Letter - Commerce Enforcement Action Order

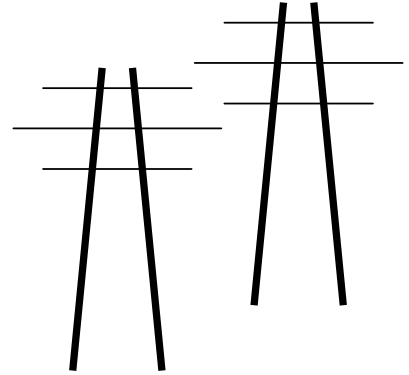
Invenergy's Thomas Spitzer

July 24, 3018 – eDockets #20187-145162-01

Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



July 24, 2018

Dan Wolf
Executive Secretary
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

via eFiling and eService only

RE: Order - Commerce Enforcement Action – Invenergy’s Thomas Spitzer
Commerce Enforcement Action and Order Revoking Commission and Fine
Freeborn Wind, LLC - MPCU Docket: IP-6946/WS-17-410; IP-6946/WS-17-322

Dear Mr. Wolf:

On behalf of Association of Freeborn County Landowners, I attach a copy of a Commerce Enforcement Action Order regarding Thomas Spitzer, revoking his notary commission and assessing a \$500 fine.¹ AFCL awaits further information from the Commerce investigation file through the Data Practices Act earlier this month.

Thomas Spitzer notarized leases for Invenergy and because he notarized improperly, sufficient for his commission to be revoked, this calls into question the validity of at least one, and perhaps more, land leases for the Freeborn Wind Project.

AFCL requests that the Commission make a direct request and obtain the primary documentation from Commerce for review prior to consideration of the Freeborn Wind site permit.

Thank you for your consideration of these matters.

Very truly yours,

Carol A. Overland
Attorney at Law

¹Online at: <https://www.cards.commerce.state.mn.us/CARDS/security/search.do?documentId={9DE2F4F8-D4CE-46E0-99F5-EC586625586A}>

JUN 26 2018

Rec'd \$ 500

File: 49913/lr

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of
Thomas S Spitzer
Notary Commission #31080307

CONSENT ORDER

TO: Thomas Spitzer
24800 41st NE
Wilton, ND 58579

Commissioner of Commerce Jessica Looman (Commissioner) has determined as follows:

The Commissioner has advised Thomas Spitzer (Respondent) that she is prepared to commence formal action pursuant to Minn. Stat. § 45.027 (2016), and other applicable law, against Respondent based on allegations that Respondent affixed his signature and notary stamp to a document without witnessing the actual signing of the document by another person in violation of Minn. Stat. § 359.085 subd. 3 (2016).

Respondent acknowledges that he has been advised of his rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondent hereby expressly waives those rights. Respondent further acknowledges that he has been represented by legal counsel throughout these proceedings, or has been advised of his right to be represented by legal counsel, which right he hereby expressly waives.

Respondent has agreed to informal disposition of this matter without a hearing as provided under Minn. Stat § 14.59 (2016) and Minn. R. 1400:5900 (2016).

The following Order is in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 45.027, subd. 6 (2016), that Respondent shall pay to the state of Minnesota a civil penalty of \$500.

IT IS HEREBY ORDERED, pursuant to Minn. Stat. §§ 45.027, subd. 7 and 359.12 (2016), that Respondent is removed from his office as a notary in the state of Minnesota.

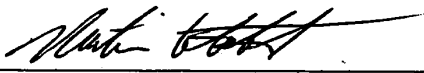
IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 359.12 (2016), that Respondent shall surrender his official notary stamp and deliver it to the Commissioner within five days of the effective date of this order.

This Order shall be effective upon signature on behalf of the Commissioner.

Dated: 6-29-2018

JESSICA LOOMAN
Commissioner

By:


MARTIN FLEISCHHACKER
Minnesota Department of Commerce
Assistant Commissioner of Enforcement
85 Seventh Place East, Suite 280
Saint Paul, Minnesota 55101
651-539-1600

File: 49913/lr

CONSENT TO ENTRY OF ORDER

The undersigned, Thomas Spitzer ("Respondent"), states that he has read the foregoing Consent Order; that he knows and fully understands its contents and effect; Respondent acknowledges that he has been advised of his rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondent hereby expressly waives those rights. Respondent further acknowledges that he has been represented by legal counsel throughout these proceedings, or has been advised of his right to be represented by legal counsel, which right he hereby expressly waives; and he consents to entry of this Order by the Commissioner. It is further understood that this Consent Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

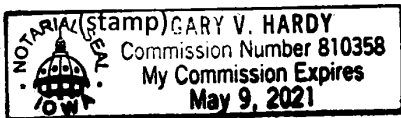
Respondent

By: *Thomas S. Spitzer*
Thomas S. Spitzer

STATE OF IOWA
COUNTY OF Worth

This instrument was acknowledged before me this 21st day of June, 20 18,
by Gary V. Hardy.

Gary V. Hardy
(Signature of notary officer)



My commission expires: 5-9-21

Exhibit C

William Gillen Easements and Easement Amendments

Signed as “a single person”

OFFICE OF COUNTY RECORDER
FREEBORN COUNTY, MINNESOTA



Document A- 524349

Certified, Filed, and/or Recorded on:

October 28, 2016 11:15 AM

KELLY CALLAHAN

FEE: \$46.00

FREEBORN COUNTY RECORDER

By: NH

The space above this line is reserved for recording purposes.

GRANT OF EASEMENTS

THIS GRANT OF EASEMENTS (this "Agreement") is made, dated and effective as of July 24, 2015 (the "Effective Date"), between **William Gillen, a single person** (together with his successors, assigns and heirs, "Owner"), and INVENERGY WIND DEVELOPMENT LLC, a Delaware limited liability company (together with its transferees, successors and assigns, "Grantee"), and in connection herewith, Owner and Grantee agree, covenant and contract as set forth in this Grant of Easements.

1. Grant of Easement and Profits. For good and valuable consideration, the receipt of which is hereby acknowledged by Owner, Owner hereby grants, bargains, sells, conveys and warrants to Grantee an exclusive easement for wind energy purposes and for any and all activities related thereto upon, over, across, through and under the real property of Owner located in the County of Freeborn, State of Minnesota and legally described on Exhibit A attached hereto and incorporated herein (the "**Property**"), together with the right to all rents, royalties, credits and profits derived from wind energy purposes upon, over and across the Property.

The Easement Premises are that portion of the Property shown on Exhibit B which shall consist horizontally three hundred and sixty degrees (360°) from any point where any Windpower collection Facilities are or may be located at any time from time to time (each such location referred to as a "**Site**") and for a distance from each Site to the boundaries of the Easement Premises together vertically through all space located above the surface of the Easement Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Easement Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Easement Premises.

2. Wind Energy. Under this Grant of Easements, "wind energy purposes" means converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto, including, without limitation:

(a) determining the feasibility of wind energy conversion and other power generation on the Property, including studies of wind speed, wind direction and other meteorological data, extracting soil samples, and erecting anemometers;

(b) constructing, laying down, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, wind turbines, overhead and

IN WITNESS WHEREOF, Owner and Grantee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

OWNER:

William Gillen, a single person

William Gillen
William Gillen, a single person

GRANTEE:

INVENERGY WIND DEVELOPMENT LLC,
a Delaware limited liability company

Kevin Parzyck
By: Kevin Parzyck
Name: Kevin Parzyck
Title: Vice President, Development

This Document Drafted By:

Invenergy Wind Development LLC
Attn: Michael Svedeman
One South Wacker Drive
Chicago, IL 60606 312-224-1400

**Recording Requested By and
When Recorded Return to:**

Invenergy Wind Development LLC
c/o Invenergy LLC
Attn: Land Administration
One South Wacker Drive
Chicago, IL 60606 312-224-1400

ACKNOWLEDGMENT

STATE OF MINNESOTA)
) SS.
COUNTY OF Freeborn)

4

Personally came before me this 10 day of September, 2015
William Gillen, who executed the foregoing instrument, and
acknowledged the same. a single person

(SEAL)



Name: David Lee Johnson
Notary Public, State of Minnesota
My Commission: January 31, 2020

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Personally came before me this 23 day of September
2015, Kevin Parzyck, the Vice President of Invenergy Wind Development LLC, who executed
the foregoing instrument, and acknowledged the same, on behalf of Invenergy Wind
Development LLC, a Delaware limited liability company.

(SEAL)



Name: Samia K. Atasi
Notary Public, State of Illinois
My Commission: 4/9/19

EXHIBIT A
The Property

Schedule of Locations:

<u>Parcel Number</u>	<u>County</u>	<u>Township/ Range</u>	<u>Section</u>	<u>Acreage</u>
020140051	Freeborn	101/20	14	40.00
			Total	<hr/> 40.00

Legal Description:

NW 1/4 NW 1/4 of Section 14, Township 101 North, Range 20 West containing 40.00 acres more or less.

OFFICE OF COUNTY RECORDER
FREEBORN COUNTY, MINNESOTA



Document A- 528580

Certified, Filed, and/or Recorded on:

August 17, 2017 9:20 AM

KELLY CALLAHAN

FEE: \$46.00

FREEBORN COUNTY RECORDER

By: NH

DRAFTED BY AND UPON RECORDING RETURN TO:
INVENERGY WIND DEVELOPMENT LLC
ONE SOUTH WACKER DRIVE, SUITE 2020
CHICAGO, IL 60606

THE SPACE ABOVE THIS LINE IS RESERVED FOR RECORDING PURPOSES.

FIRST AMENDMENT TO AGREEMENT REGARDING EASEMENTS

THIS FIRST AMENDMENT TO AGREEMENT REGARDING EASEMENTS (this "Amendment") is made as of July 31, 2017 by and between William Gillen, a single person (together with his successors, assigns and heirs, "Owner") and Invenergy Wind Development LLC, a Delaware limited liability company (together with its transferees, successors and assigns "Grantee") and in connection herewith, Owner and Grantee agree, covenant and contract as set forth in this Amendment

WITNESSETH:

WHEREAS, Grantee and Owner are parties to that certain Agreement Regarding Easements dated July 24, 2015 as evidenced by that certain Grant of Easements recorded on October 28, 2016 as Document No. A-524349 in the official records of Freeborn County, Minnesota (collectively, the "Agreement"), as such property is more particularly described in Schedule A hereto.

WHEREAS, Grantee and Owner desire to amend the Agreement on the terms and conditions as provided below.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Grantee and Owner hereby agree that the Agreement shall be amended as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated herein by this reference.
2. **Exhibit C.** Exhibit C of the Agreement Regarding Easements is amended as shown on Schedule B hereto. Schedule B will be removed prior to recording, and the removal thereof shall not affect the validity hereof.

IN WITNESS WHEREOF, the parties hereto having due authorization on behalf of their respective entities have executed this Amendment as of the day and year set forth above.

Owner:

William Gillen

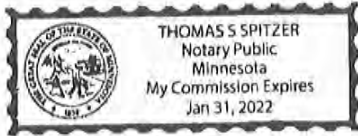
William Gillen

Grantee: **Invenergy Wind Development LLC**

By: *[Signature]*
Its: Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF Freedom)

On the 24th day of July 2017 before me, a Notary Public, in and for said County personally appeared William Gillen, a single person, to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be his free act and deed.



Thomas S Spitzer

Notary Public

STATE OF Illinois)
) ss.
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 31 day of July, 2017, by Kevin E Parzyck the Vice President of Invenergy Wind Development LLC, a Delaware limited liability company, on behalf of the limited liability company.



Samia K Atasi

Notary Public

OFFICE OF COUNTY RECORDER
FREEBORN COUNTY, MINNESOTA



Document A- 531971

Certified, Filed, and/or Recorded on:

April 16, 2018 1:25 PM

KELLY CALLAHAN
FREEBORN COUNTY RECORDER

FEE: \$46.00

By: NH

DRAFTED BY AND UPON RECORDING RETURN TO:
INVENERGY WIND DEVELOPMENT LLC
ONE SOUTH WACKER DRIVE, SUITE 1800
CHICAGO, IL 60606

THE SPACE ABOVE THIS LINE IS RESERVED FOR RECORDING PURPOSES.

SECOND AMENDMENT TO AGREEMENT REGARDING EASEMENTS

THIS SECOND AMENDMENT TO AGREEMENT REGARDING EASEMENTS (this "Amendment") is made as of April 10, 2018 by and between **William Gillen; a single person** (together with its transferees, successors and assigns, "Owner") and Invenergy Wind Development LLC, a Delaware limited liability company (together with its transferees, successors and assigns "Grantee") and in connection herewith, Owner and Grantee agree, covenant and contract as set forth in this Amendment

WITNESSETH:

WHEREAS, Grantee and Owner are parties to that certain Agreement Regarding Easements dated July 24, 2015 as evidenced by that certain Grant of Easements recorded on October 28, 2016 as Document No. A-524349, and amended by that First Amendment to Agreement Regarding Easements dated July 31, 2017, recorded on August 17, 2017 as Document No. A-528580 in the official records of Freeborn County, Minnesota (collectively, the "Agreement"), as such property is more particularly described in Schedule A hereto.

WHEREAS, Grantee and Owner desire to amend the Agreement on the terms and conditions as provided below.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Grantee and Owner hereby agree that the Agreement shall be amended as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto having due authorization on behalf of their respective entities have executed this Amendment as of the day and year set forth above.

Owner:

William Gillen
William Gillen

Grantee: ~~Invenergy~~ Wind Development LLC

By: Kevin E. Parzyck
Its: Kevin E. Parzyck
Vice President

STATE OF Minnesota)
) ss.
COUNTY OF Fuelton)

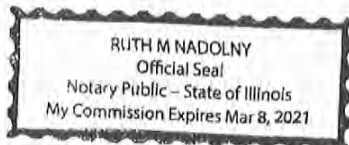
On the 5th day of April, 2018 before me, a Notary Public, in and for said County personally appeared William Gillen, a single person, to me known to be the same person(s) described in and who executed the within instrument, who acknowledged the same to be his/her/their free act and deed.



Thomas Spitz
Notary Public

STATE OF Illinois)
) ss. 1-31-2022
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 10th day of April, 2018, by Kevin E. Parzyck the Vice President of Invenergy Wind Development LLC, a Delaware limited liability company, on behalf of the limited liability company.



Ruth M. Nadolny
Notary Public

3-8-2021

**SCHEDULE A
TO
SECOND AMENDMENT
TO AGREEMENT REGARDING EASEMENTS**

LEGAL DESCRIPTION OF OWNER'S PROPERTY

The Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section Fourteen (14),
Township One Hundred One (101) North, Range Twenty (20) West of the Fifth Principal Meridian,
Freeborn County, Minnesota.

Tax Parcel ID No. 02.014.0051

Exhibit D

William Gillen Marriage License

Filed October 10, 2013

NOT FOR LEGAL PURPOSES

STATE OF IOWA
IOWA DEPARTMENT OF PUBLIC HEALTH
CERTIFICATE OF MARRIAGE
Marriage Ceremony Performed in the State of Iowa

114-

COUNTY: WORTH LICENSE NUMBER: 28141

Spouse 14	PARTY A - NAME BEFORE MARRIAGE				LAST NAME PRIOR TO ANY MARRIAGE
	FIRST <u>Melinda</u>	MIDDLE <u>Marie</u>	LAST <u>Bartz</u>	SUFFIX, if any	<u>Berg</u>
Spouse 15	PARTY A - NAME AFTER MARRIAGE				SUFFIX, if any
	FIRST <u>Melinda</u>	MIDDLE <u>Marie</u>	LAST <u>Bartz Gillen</u>		
Spouse 16	RESIDENCE - STATE		RESIDENCE - CITY, TOWN, OR LOCATION		
	<u>Iowa</u>		<u>Northwood</u>		
Spouse 17	STATE OF BIRTH (if not in U.S.A., name of foreign country)		DATE OF BIRTH (Month, Day, Year)	GENDER	
	<u>Iowa</u>		<u>December 10, 1961</u>	<u>Female</u>	
Spouse 18	FATHER - CURRENT NAME		MOTHER - NAME PRIOR TO ANY MARRIAGE		
	<u>Allen Jene Berg</u>		<u>Marsha Rae Fox</u>		
Spouse 19	PARTY B - NAME BEFORE MARRIAGE				LAST NAME PRIOR TO ANY MARRIAGE
	FIRST <u>William</u>	MIDDLE <u>Glen</u>	LAST <u>Gillen</u>	SUFFIX, if any	<u>Gillen</u>
Spouse 20	PARTY B - NAME AFTER MARRIAGE				SUFFIX, if any
	FIRST <u>William</u>	MIDDLE <u>Glen</u>	LAST <u>Gillen</u>		
Spouse 21	RESIDENCE - STATE		RESIDENCE - CITY, TOWN, OR LOCATION		
	<u>Minnesota</u>		<u>Glenville</u>		
Spouse 22	STATE OF BIRTH (if not in U.S.A., name of foreign country)		DATE OF BIRTH (Month, Day, Year)	GENDER	
	<u>Minnesota</u>		<u>October 23, 1963</u>	<u>Male</u>	
Spouse 23	FATHER - CURRENT NAME		MOTHER - NAME PRIOR TO ANY MARRIAGE		
	<u>Jacob Gregory Gillen</u>		<u>Ruth Schwistal</u>		
SIGNATURE OF PARTY A (After marriage)		SIGNATURE OF PARTY B (After marriage)		DATE SIGNED (Month, Day, Year)	
<u>Melinda Bartz Gillen</u>		<u>William Glen Gillen</u>		<u>September 21 2013</u>	
I CERTIFY THAT THE ABOVE NAMED PERSONS WERE MARRIED ON		PLACE OF MARRIAGE - COUNTY	CITY, TOWN, OR LOCATION	MARRIAGE DUES (Specify Yes or No)	
<u>09/21/2013</u>		<u>Worth</u>	<u>Kensett</u>	<u>No</u>	
OFFICIANT - SIGNATURE		OFFICIANT - MAILING ADDRESS (Street Address or Post Office Box, City or Town, State, Zip Code)			
<u>Rev. Thomas E. Martin</u>		<u>P.O. BOX 38, KENSETT, IA 50498</u>			
WITNESS - SIGNATURE		WITNESS - SIGNATURE			
<u>Tamera Patterson</u>		<u>Adam Bartz</u>			
COUNTY REGISTRAR - SIGNATURE		BK-43 PG-502		DATE FILED (Month, Day, Year)	
<u>Liz Kerisonoff</u>				<u>OCTOBER 10, 2013</u>	

PLEASE PRINT NAMES OF:
 OFFICIANT REV. THOMAS E. MARTIN
 FIRST WITNESS Tamera Patterson
 SECOND WITNESS Adam Bartz

NOT FOR LEGAL PURPOSES

Exhibit E

Data Practices Act Request Responses

Requested November 21, 2018

Freeborn County

References to discussions with Commerce's Larry Hartman p. 10, 13, 19.

Sue G. Miller

From: Sue G. Miller
Sent: Tuesday, November 29, 2016 3:21 PM
To: John Kluever
Subject: Re: Wind energy informational workshop

Most of my company will be gone by then so I should be there...

Thanks.
Sue

On Nov 29, 2016, at 3:16 PM, John Kluever <John.kluever@co.freeborn.mn.us> wrote:

Chicago guy(s) here for the workshop on 12/28 at 9:00.

From: John Kluever
Sent: Tuesday, November 29, 2016 3:16 PM
To: 'Litchfield, Daniel'
Cc: Svedeman, Michael
Subject: RE: Wind energy informational workshop

Thanks for the call and look forward to seeing you on 12/28 at 9:00.

From: Litchfield, Daniel [<mailto:DLitchfield@invenergyllc.com>]
Sent: Monday, November 28, 2016 12:11 PM
To: John Kluever
Cc: Svedeman, Michael
Subject: Wind energy informational workshop

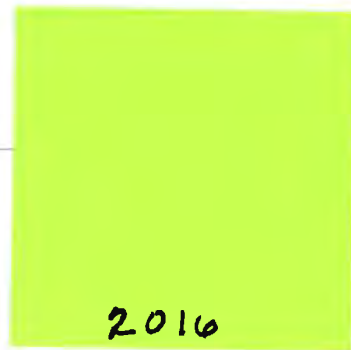
Hi John,

I just left you a voicemail about an idea for a wind energy workshop. It partially came from a meeting with Commissioner Belshan a few weeks ago. I asked if we should come present to a Commissioners' meeting and he said no, but maybe a workshop. I'm wondering what he meant by that. We are considering our own concept for a workshop/informational forum and I'd appreciate your opinion on a few matters.

Dan Litchfield | Senior Manager, Project Development
Invenergy LLC | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com T 312-582-1057 | C 773-318-1289 | F 312-224-1444

<image001.jpg>

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Sue G. Miller

From: Sue G. Miller
Sent: Friday, November 04, 2016 2:37 PM
To: 'Dan Belshan'
Cc: John Kluever
Subject: Xcel Wind
Attachments: Xcel Wind Farm initial mtg w PW 102616.docx; tentative boundary as of 102616 per invenergy.pdf

Hi Dan,

Here is the information on Xcel that we have...let us know if there is more going on out there that we should be involved in now.

Thanks. And enjoy this awesome weather!!

sue

Susan g. Miller
Freeborn County Engineer
3300 Bridge Avenue
Albert Lea, MN
sue.miller@co.freeborn.mn.us
(507) 377-5188

NOTE TO FILE

Xcel Wind Farm Development Meeting

1:30 pm, Wednesday @ FCHD

October 26, 2016

John Kluever and Sue Miller met with Dan Litchfield, Invenergy (see contact info below) for an introductory meeting with Public Works. Previously, John Kluever and Wayne Sorensen have met with representatives of Invenergy regarding future development in the southeast corner of Freeborn County.

Area and Plan:

Proposed is the construction of 200 Mega Watt Wind Farm (2 mW towers ~ 100 towers).

Area will include parts of Riceland, Hayward, Oakland, London, Shell Rock and Worth County.

Substation to serve this area is south of the City of Glenville

Tentative Timeline:

Acquisition – Completed by Jan/Feb 2017

Layout/Permitting – Beginning in Spring 2017; completed in 2017 including the County developer agreement.

Construction – Earliest in 2018. Latest in 2020.

Invenergy

www.invenergyllc.com

Dan Litchfield, Sr. Mgr. Business Development

office: 312.582.1057 cell: 773.318.1289

dlitchfield@invenergyllc.com

One South Wacker Drive, Suite 1800
Chicago, IL 60606

General Discussion:

Tower siting and haul roads have not been determined as landowner lease agreements are about 60% of what they would need to move forward. Landowner dinners have been held and most of the town boards have been visited for introductory meetings. No laydown yard has been sited. It has not been determined if rail will be used or not, but certainly this area has good highway access so Invenergy stated that is more probable.

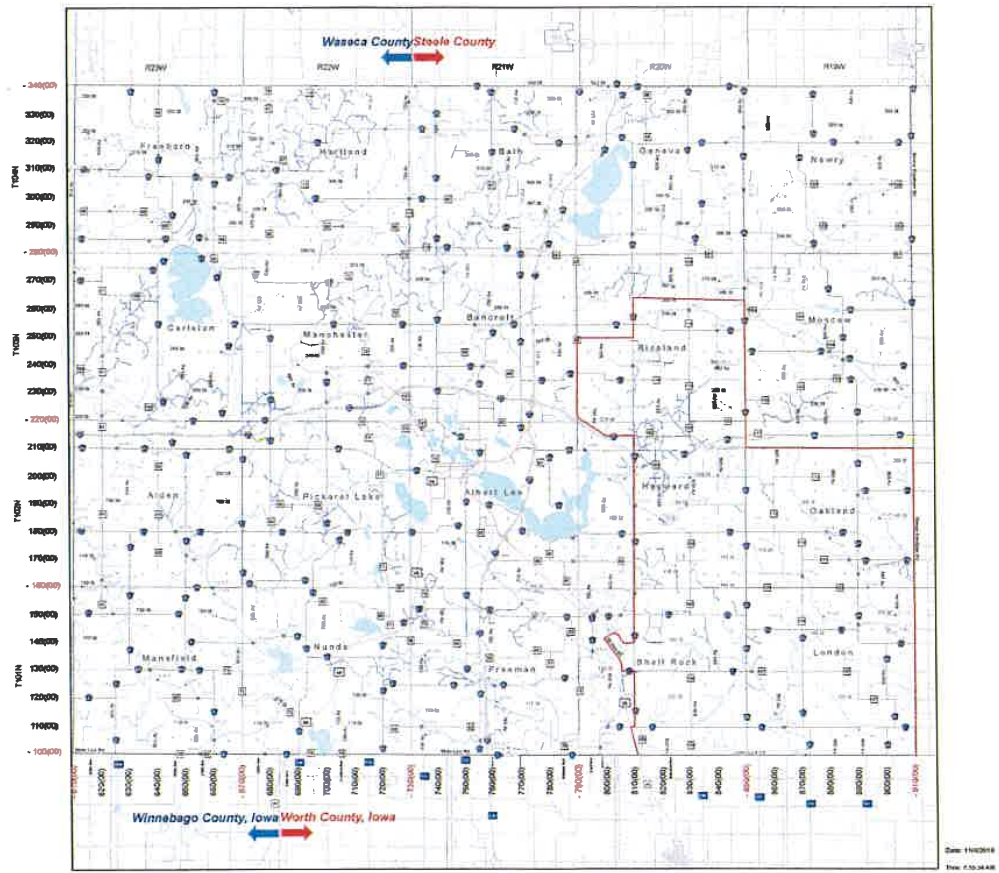
Invenergy will work with Xcel Power Company as the eventual owner. Invenergy will do all the siting and permitting including the county developer agreement with haul roads, etc; but not including building permits and access permits. Xcel will do the building permits and access permits. Xcel will also hire the contractors and run the actual construction. Concern was expressed from the County on the perspective that Xcel should be a signatory to the developers agreement citing a previous project and the problems with a large pipeline constructed in the County with the contractors unawareness and lack of contractual inclusion of County requirements in third party negotiated agreements and permits.

Discussion about environmental impacts and communication impacts from the towers and construction also yielded Invenergy's knowledge and mapping of existing conditions but admitted that communications can be one of the biggest post construction complaints. Invenergy has not done a project in Minnesota but has completed projects in VanWert and Pauling counties in Ohio. As in Ohio, a repeated theme from landowners is the concern for agricultural drainage. John Kluever also noted the need to include the County agricultural drainage system in the discussion.

Next steps:

- Public Works should dust off Township agreements in order to offer to the townships the option of designation of their road authority to the County for project purposes.
- Public Works should contact County Engineer in Ohio counties mentioned, maybe even check with Fred to see what he knows of the Ohio projects.
- Public Works should reach out to Rich in Worth County to see their level of involvement and understand their road agreements if any.

end-----



Sue G. Miller

From: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Sent: Tuesday, October 25, 2016 10:19 AM
To: Sue G. Miller
Subject: tomorrow

Hi Sue,

Are we on track for tomorrow at 1:30? I don't intend to take too much of your time – just want to introduce myself and our project, show you where we are working and discuss your experience with wind farm construction in the county and lessons learned.

Dan Litchfield | Senior Manager, Project Development
Invenergy LLC | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com T 312-582-1057 | C 773-318-1289 | F 312-224-1444



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Sue G. Miller

From: Sue G. Miller
Sent: Wednesday, October 05, 2016 1:09 PM
To: John Kluever
Subject: Re: Freeborn Wind Farm

I asked and Daniel said he has already met with you and Wayne but I think it would be good if you are available as we both know certain folks will be asking you a lot of questions?!

On Oct 5, 2016, at 12:44 PM, John Kluever <John.kluever@co.freeborn.mn.us> wrote:

Ok, do you want me there? Sounding like this is having more traction all the time.

Sent from my iPhone

On Oct 5, 2016, at 12:25 PM, Sue G. Miller <Sue.Miller@co.freeborn.mn.us> wrote:

Fyi – Mr. Litchfield will be meeting with me on 10/26 at 1:30 pm here in my office. Wanted you to be up to date so you could relay to the Commissioner of that district. Note: Mr. Litchfield said they plan to begin the conversations with the townships next week I think.

sue

From: Litchfield, Daniel [<mailto:DLitchfield@invenergyllc.com>]
Sent: Wednesday, September 28, 2016 3:01 PM
To: Sue G. Miller
Cc: Svedeman, Michael
Subject: Freeborn Wind Farm

Hello Ms. Miller,

Michael Svedeman and I are developing a new wind farm in the southeastern corner of Freeborn County. The project has been under development for quite a while, but we are starting to get busier on it and hope to get into permitting next year. I don't believe our team has met with you before and if you have some time available, I would like to have an introductory meeting and learn about your experience with wind in the County and how we can best prepare our project to meet your requirements. Are you available on Tuesday, October 11?

Sincerely,

Dan Litchfield | Senior Manager, Project Development
Invenergy LLC | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com T 312-582-1057 | C 773-318-1289 | F 312-224-1444

<image001.jpg>

Sue G. Miller

From: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Sent: Wednesday, September 28, 2016 3:01 PM
To: Sue G. Miller
Cc: Svedeman, Michael
Subject: Freeborn Wind Farm

Hello Ms. Miller,

Michael Svedeman and I are developing a new wind farm in the southeastern corner of Freeborn County. The project has been under development for quite a while, but we are starting to get busier on it and hope to get into permitting next year. I don't believe our team has met with you before and if you have some time available, I would like to have an introductory meeting and learn about your experience with wind in the County and how we can best prepare our project to meet your requirements. Are you available on Tuesday, October 11?

Sincerely,

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Invenergy LLC | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com T 312-582-1057 | C 773-318-1289 | F 312-224-1444



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Sue G. Miller

From: John Kluever
Sent: Thursday, September 08, 2016 9:23 AM
To: Sue G. Miller
Cc: Wayne Sorensen
Subject: RE: Wind Farm

No maps or anything to that level. This was just another check in visit as they have been doing periodically over the past year or two.

If what he says holds to form, I would guess more substantive conversations, documents, plans, developers agreements, etc... all start to take place next year if they begin the permit process as he stated and wish to be fully operational by end of 2019

They are still keeping everyone close (i.e. ask if he could ID the buyer for the project and he politely said no).

From: Sue G. Miller
Sent: Thursday, September 08, 2016 9:15 AM
To: John Kluever
Cc: Wayne Sorensen
Subject: RE: Wind Farm

Did he provide a revised map of the wind farm footprint? We have several projects in this neck of the woods in the next couple years....

From: John Kluever
Sent: Thursday, September 08, 2016 8:06 AM
To: Sue G. Miller
Cc: Wayne Sorensen
Subject: Wind Farm

Chicago guy (Dan) from Invenergy was here yesterday to update the proposed wind farm project:

What he said was:

- Signing buyer agreement for the project in the near future;
- Secure all the land/property owners by the end of 2016;
- Begin permit process in 2017; and
- Looking at being fully operational at end of 2019 (when the current federal tax credits run out)

All for now and stay tuned to this local station for more updates as they come available. Now back to our regular broadcasting.

Sue G. Miller

From: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Sent: Wednesday, March 08, 2017 3:59 PM
To: Sue G. Miller
Cc: Svedeman, Michael
Subject: ROW permits

Follow Up Flag: Follow up
Flag Status: Completed

Hi Sue,

I understand that you are out of the office this week. When you get a moment, would you be able to call or email me back to answer some questions about the use of County ROW easements for running collection lines?

I spoke with Sandy at your office and she was very helpful but deferred some questions to you.

The approval process is pretty straightforward – the road maintenance engineer visits the site to inspect and if he signs off, then you could approve. The typical charge is \$100 per site permit. If we are seeking a route and not a specific site, the permit fee would be commensurately higher. She said the turnaround time is usually a couple days or weeks and you are the approver, but you sometimes take more complex applications to the Board of Commissioners. What would trigger that review? Sandy said the concept of getting a permit in the near term but not building for several years shouldn't be a problem, as long as we state our plans at the time of application.

One question: are you able to grant sub-easements of your easement, as an alternative to the ROW permit?

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC
@danlitch

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Sue G. Miller

From: Michal Hanson <michal@CO.MOWER.MN.US>
Sent: Thursday, March 09, 2017 1:54 PM
To: Sue G. Miller
Subject: RE: ROW permits

Well then I screwed up too ☺ But...

These wind projects are done as "turn key" where a contractor builds it and then a company like xcel take it. So I consider them public utilities.

From: Sue G. Miller [<mailto:Sue.Miller@co.freeborn.mn.us>]
Sent: Thursday, March 09, 2017 12:41 PM
To: Michal Hanson
Subject: Re: ROW permits

Yes that is my question. I forwarded the email below to Larry Hartman asking if I screwed up on Bent Tree by treating these lines as a public utility and if Invenergy would be considered a public utility or ultimately XCel.

On Mar 9, 2017, at 12:21 PM, Michal Hanson <michal@CO.MOWER.MN.US> wrote:

I would say an emphatic no to granting "sub-easements".

I do not see where there would be any advantage to the county...or whether you even could grant them for that matter.

I would also say that they (or will be after constructed) a public utility....

Are those your questions?

From: Sue G. Miller [<mailto:Sue.Miller@co.freeborn.mn.us>]
Sent: Thursday, March 09, 2017 9:44 AM
To: Michal Hanson
Subject: Fwd: ROW permits

Mike, read below please. Also, can you send me your fee schedule? Much appreciated!

Sue

Begin forwarded message:

From: "Sue G. Miller" <Sue.Miller@co.freeborn.mn.us>
Date: March 8, 2017 at 4:02:06 PM CST

To: Michal Hanson <michal@co.mower.mn.us>

Subject: Fwd: ROW permits

I defer to your vast experience with Alliant, they are a public utility so that is how we treated permitting the electrical collection lines, right or wrong?

How have you handle this element of wind farm construction?

Begin forwarded message:

From: "Litchfield, Daniel" <DLitchfield@invenergyllc.com>

Date: March 8, 2017 at 3:59:00 PM CST

To: "Susan G. Miller (sue.miller@co.freeborn.mn.us)" <sue.miller@co.freeborn.mn.us>

Cc: "Svedeman, Michael" <MSvedeman@invenergyllc.com>

Subject: ROW permits

Hi Sue,

I understand that you are out of the office this week. When you get a moment, would you be able to call or email me back to answer some questions about the use of County ROW easements for running collection lines?

I spoke with Sandy at your office and she was very helpful but deferred some questions to you.

The approval process is pretty straightforward – the road maintenance engineer visits the site to inspect and if he signs off, then you could approve. The typical charge is \$100 per site permit. If we are seeking a route and not a specific site, the permit fee would be commensurately higher. She said the turnaround time is usually a couple days or weeks and you are the approver, but you sometimes take more complex applications to the Board of Commissioners. What would trigger that review? Sandy said the concept of getting a permit in the near term but not building for several years shouldn't be a problem, as long as we state our plans at the time of application.

One question: are you able to grant sub-easements of your easement, as an alternative to the ROW permit?

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC @danlitch

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Sue G. Miller

From: Hartman, Larry (COMM) <larry.hartman@state.mn.us>
Sent: Thursday, March 09, 2017 3:16 PM
To: Sue G. Miller
Subject: RE: Future Freeborn County Wind Farm

Follow Up Flag: Follow up
Flag Status: Completed

Sue: Thank you for your inquiry. However, without more information I am unable to respond. It would be helpful to discuss this matter on the phone in order to provide an appropriate response. Please contact me at your convenience.

Larry B. Hartman
Larry.hartman@state.mn.us
Tel: 651-539-1839

From: Sue G. Miller [mailto:Sue.Miller@co.freeborn.mn.us]
Sent: Thursday, March 09, 2017 3:08 PM
To: Hartman, Larry (COMM) <larry.hartman@state.mn.us>
Subject: Future Freeborn County Wind Farm

Good Morning Mr. Hartman:

You were very helpful in the past with the planning and implementation of the Bent Tree Wind Farm in Freeborn County. I was hopeful that you could assist me with responding to the email below.

With the County's experience on Bent Tree, we permitted the underground electrical collection system as a public utility able to be placed in the road right easement. Upon initial meetings the Invenergy, we proposed the same process. This is the second phone call/email questioning our process and now I am wondering if the County didn't handle this correctly with Bent Tree.

The core question would be: are these underground electric collection lines considered a public utility allowable in the public right of way?

I would so appreciate your guidance. We have a new county attorney who has previously focused his career on the criminal side and is not immediately knowledgeable in this area.

Thank you so much!

sue

Begin forwarded message:

From: "Litchfield, Daniel" <DLitchfield@invenergyllc.com>
Date: March 8, 2017 at 3:59:00 PM CST
To: "Susan G. Miller (sue.miller@co.freeborn.mn.us)" <sue.miller@co.freeborn.mn.us>
Cc: "Svedeman, Michael" <MSvedeman@invenergyllc.com>
Subject: ROW permits

Hi Sue,

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[@InvenergyLLC](#) [@danlitch](#)

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Via Certified Mail

March 31, 2017

Susan Miller, Engineer
 Highway Department
 3300 Bridge Avenue
 Albert Lea, MN 56007

RE: Freeborn Wind Farm, Freeborn County, Minnesota

Dear Susan Miller:

Freeborn Wind Energy LLC, a wholly-owned subsidiary of Invenergy LLC, is proposing a wind energy project in Freeborn County, Minnesota and Worth County, Iowa called the Freeborn Wind Farm (Project). The purpose of this letter is to request agency comments and gather additional information regarding the Minnesota-portion of the Project Boundary as indicated in the attached Figure 1. Comments and information we receive will be included in the Site Permit Application for a Large Wind Energy Conversion System we will be submitting to the Minnesota Public Utilities Commission (MPUC).

The locations of turbines, access roads, collection lines, crane paths and related facilities are being finalized. The following sections are located within the Project Boundary in Minnesota.

Table 1 Sections within the Freeborn Wind Farm Project Boundary

County	Civil Township Name	Township	Range	Sections
Freeborn	Hayward	102	20	12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36
Freeborn	London	101	19	13, 14, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33
Freeborn	Oakland	102	19	7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22
Freeborn	Shell Rock	101	20	1, 2, 8, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, 36



The Project would include a nameplate wind energy capacity of up to 100 megawatts (MW) in Minnesota. Project facilities include:

- Wind turbines and associated equipment;
- Gravel access roads to turbine sites and necessary modification to existing roads;
- Buried electric collection lines;
- Overhead electric collection lines;
- An operations and maintenance facility;
- A Project substation and
- Permanent meteorological towers.

Temporary facilities for the Project include staging areas for construction of the Project, two temporary meteorological towers that are currently in place, temporary batch plant area, and improvements to public and private roads for delivery of materials and equipment.

Please respond with any comments and/or questions within 30 days of receipt of this letter so that we can address, as appropriate, and include them within the MPUC Site Permit Application.

Should you require additional information, please feel free to contact me at dlitchfield@invenergyllc.com, 312.582.1057, or Freeborn Wind Energy LLC, c/o Invenergy LLC, One South Wacker Drive, Suite 1800, Chicago, IL 60606.

Sincerely,

Freeborn Wind Energy LLC

Dan Litchfield
Senior Manager, Project Development

Enc. Figure 1 Project Boundary Map

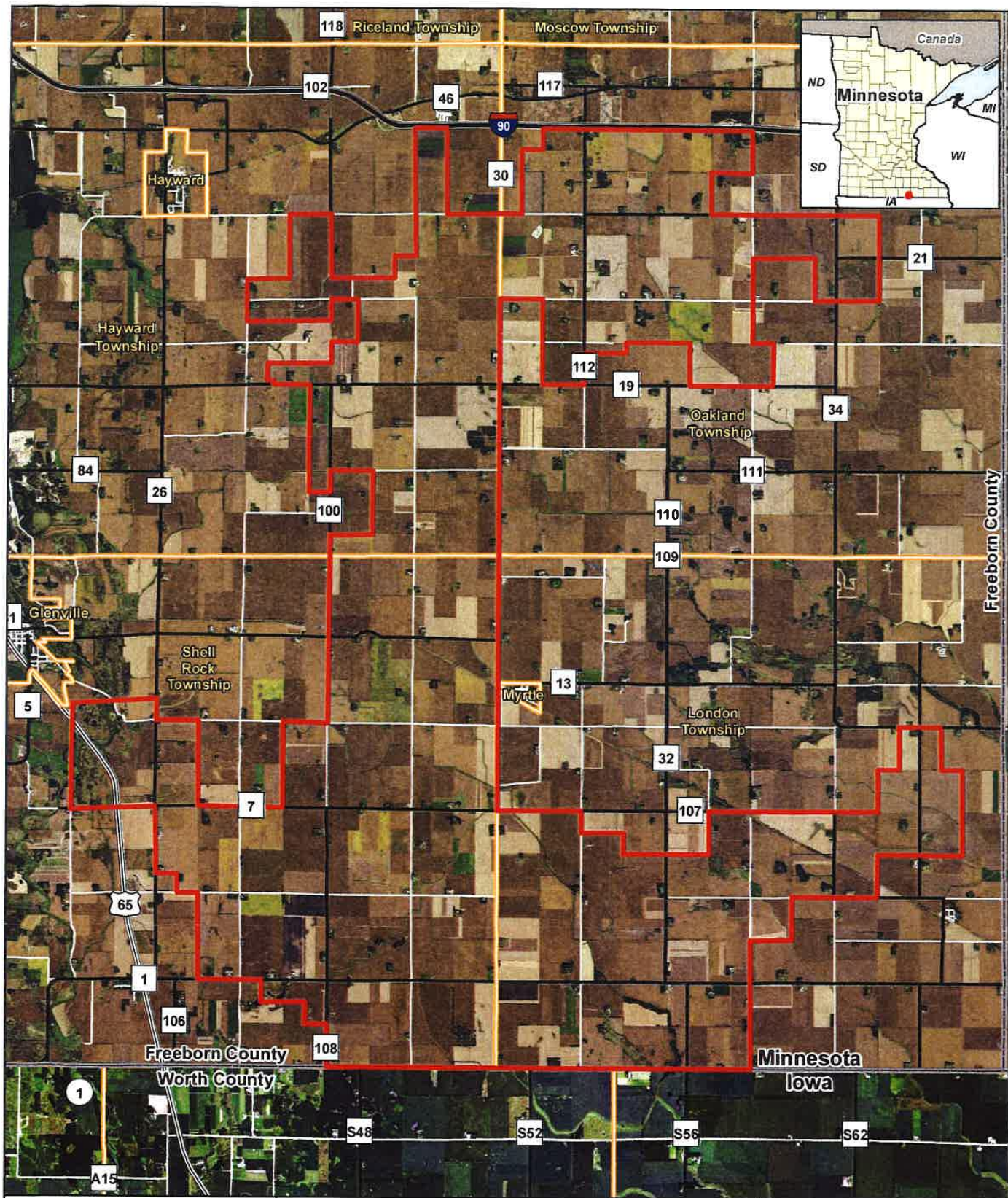


Figure 1
Freeborn Wind Farm
Project Boundary
Freeborn County, MN

 Project Boundary

Freeborn Wind Energy LLC
c/o Invenergy LLC
One South Wacker Drive, Suite 1800
Chicago, IL 60606

CERTIFIED MAIL™



7013 1710 0001 3938 3876

Highway Department
Susan Miller
Engineer
3300 Bridge Avenue
Albert Lea, MN 56007



1000



56007

U.S. POSTAGE
PAID
MINNEAPOLIS, MN
55401
MAR 31, 17
AMOUNT
\$3.84
R2305M145830-05



56007-424600

Sue G. Miller

From: Sue G. Miller
Sent: Monday, April 10, 2017 8:26 AM
To: Wayne Sorensen; John Kluever
Subject: RE: Two more questions

I did talk with Larry Hartman at the PUC and he confirmed the status.

Thanks Wayne!

From: Wayne Sorensen
Sent: Monday, April 10, 2017 8:22 AM
To: Sue G. Miller; John Kluever
Subject: RE: Two more questions

It appears this "mega" company probably has various divisions that are proceeding to try and get their ducks in a row. To my knowledge the State permit has not been formally applied for though, so I am still guessing 2018 construction.

That being said, they do appear to be putting the cart ahead of the horse. I agree with Sue that the developers agreement should be started.

Wayne

From: Sue G. Miller
Sent: Monday, April 10, 2017 7:53 AM
To: John Kluever; Wayne Sorensen
Subject: FW: Two more questions

I am of the opinion that these folks need to formally initiate the developers agreement. This feels like the cart ahead of the horse or a divide and conquer type approach versus the holistic project management I believe we strive to execute.

Let me know your thoughts.....I have been fielding a few calls from Townships and also believe a comprehensive approach would be beneficial to them as well.

sue

From: Birmingham, Daniel [<mailto:DBirmingham@invenergyllc.com>]
Sent: Monday, April 10, 2017 7:49 AM
To: Sue G. Miller
Cc: Svedeman, Michael; Litchfield, Daniel; Halley, Nicholas; Leon, Andrew; Correa, Esteban
Subject: RE: Two more questions

Good morning Sue,

I am following up on Dan's behalf to introduce Nick, Andy, and Esteban (copied) from Invenergy's construction and electrical engineering teams. They had some specific questions regarding the required documentation for the ROW permit along T-236/840th or CSAH 30/850th that you discussed with Dan last week. I will defer to them but wanted to make the introduction.

Thanks,

Daniel

From: Litchfield, Daniel
Sent: Wednesday, April 5, 2017 9:50 AM
To: Halley, Nicholas <NHalley@invenergyllc.com>
Cc: Birmingham, Daniel <DBirmingham@invenergyllc.com>; Svedeman, Michael <MSvedeman@invenergyllc.com>
Subject: FW: Two more questions

FYI below, both on electrical routes and roads.

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC
@danlitch

From: Sue G. Miller [<mailto:Sue.Miller@co.freeborn.mn.us>]
Sent: Wednesday, April 05, 2017 8:46 AM
To: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Cc: loren.lair@yahoo.com
Subject: Re: Two more questions

Hi Dan-

CSAH 30 will need to be widened/regarded at some point in future but transportation funding in Minnesota is in flux right now so not defined dates.

The County has not met with the townships to see if they would want to work with the County as their road authority agent for the purposes of this project only. The County did act as the agent for the townships on the previous Wind Farm development project and it worked well.

I would imagine that the same public utilities question raised by the County would apply to use of the township right of way for electrical lines as well since the same Statutes apply.

Sue

On Apr 5, 2017, at 7:55 AM, Litchfield, Daniel <DLitchfield@invenergyllc.com> wrote:

Good morning Sue,

Are there any impending plans to widen or do other major work on County Highway 30/850th ave?

T-236/840th ave may be a better solution as we have a majority of private ROW asking that corridor. Should I ask the townships directly about that or also work with you on a ROW permit?

Dan Litchfield
773-318-1289

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Sue G. Miller

From: Halley, Nicholas <NHalley@invenergyllc.com>
Sent: Monday, April 10, 2017 8:59 AM
To: Birmingham, Daniel; Sue G. Miller
Cc: Svedeman, Michael; Litchfield, Daniel; Leon, Andrew; Correa, Esteban
Subject: RE: Two more questions

Hello Sue,

I think it would be best to have a short call with the team. What time works for you this week?

Kind Regards,

Nicholas C. Halley | Senior Project Manager
Invenergy LLC | One South Wacker Drive, Suite 1800, Chicago, IL 60606
nhalley@invenergyllc.com | D +1 312-582-1256 | M +1 614-507-1937 | @InvenergyLLC

From: Birmingham, Daniel
Sent: Monday, April 10, 2017 7:49 AM
To: Sue G. Miller <Sue.Miller@co.freeborn.mn.us>
Cc: Svedeman, Michael <MSvedeman@invenergyllc.com>; Litchfield, Daniel <DLitchfield@invenergyllc.com>; Halley, Nicholas <NHalley@invenergyllc.com>; Leon, Andrew <ALEon@invenergyllc.com>; Correa, Esteban <ECorrea@invenergyllc.com>
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Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606

dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC
@danlitch

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Sent: Wednesday, April 05, 2017 8:46 AM
To: Litchfield, Daniel <DLitchfield@invenergyllc.com>
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Dan Litchfield
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Sue G. Miller

From: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Sent: Wednesday, April 12, 2017 10:32 AM
To: Sue G. Miller
Cc: Brusven, Christina; Leon, Andrew; Svedeman, Michael; Birmingham, Daniel; Halley, Nicholas
Subject: Freeborn wind farm ROW permit discussion

Hi Sue,

I'd like to set up a phone call with our team and anyone else on the County's side to discuss our potential use of public ROW along either township or county roads. We'd like to cover the definition of public utility and issues around that, and also understand a bit better what you would want to see in an eventual permit application. We are available on Friday from 10:30-11:30. Would that work for you? I'll send a calendar event with a call-in #.

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC
@danlitch

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VIA UPS

April 27, 2017

Susan G. Miller, Engineer
Highway Department
3300 Bridge Avenue
Albert Lea, MN, 56007

**RE: Freeborn Wind Energy Proposed Transmission Line Project
Notice of Availability for Meeting**

Dear Susan G. Miller:

Freeborn Wind Energy LLC ("Freeborn Wind"), a wholly-owned subsidiary of Invenergy LLC ("Invenergy"), is proposing the Freeborn Wind Farm, a wind energy project in Freeborn County, Minnesota and Worth County, Iowa ("Project"). You should have recently received a letter from me requesting input regarding the Project for the purposes of its upcoming Minnesota Public Utilities Commission ("MPUC") Site Permit Application.

The Project will also include the construction of an approximately seven-mile long 161 kilovolt ("kV") transmission line from the Project Substation in Shell Rock Township to the interconnection point located at the existing Glenworth Substation just southeast of Glenville, Minnesota in Shell Rock Township as well. A map of the proposed route for the transmission line is included with this letter.

Freeborn Wind is currently gathering information in preparation for filing a Route Permit Application for a High Voltage Transmission Line ("Route Permit") to the MPUC under its alternative review procedures. This Route Permit process would be separate but more or less contemporaneous with the Project's Site Permit application, thus this separate letter seeking comment. We would appreciate any input you have regarding the proposed transmission line, and we would be happy to meet with you to discuss the transmission line if desired.

Please respond with any comments and/or questions to me at ditchfield@invenergyllc.com, 773-318-1289, or Freeborn Wind Energy LLC, c/o Invenergy LLC, One South Wacker Drive, Suite 1800, Chicago, IL 60606.

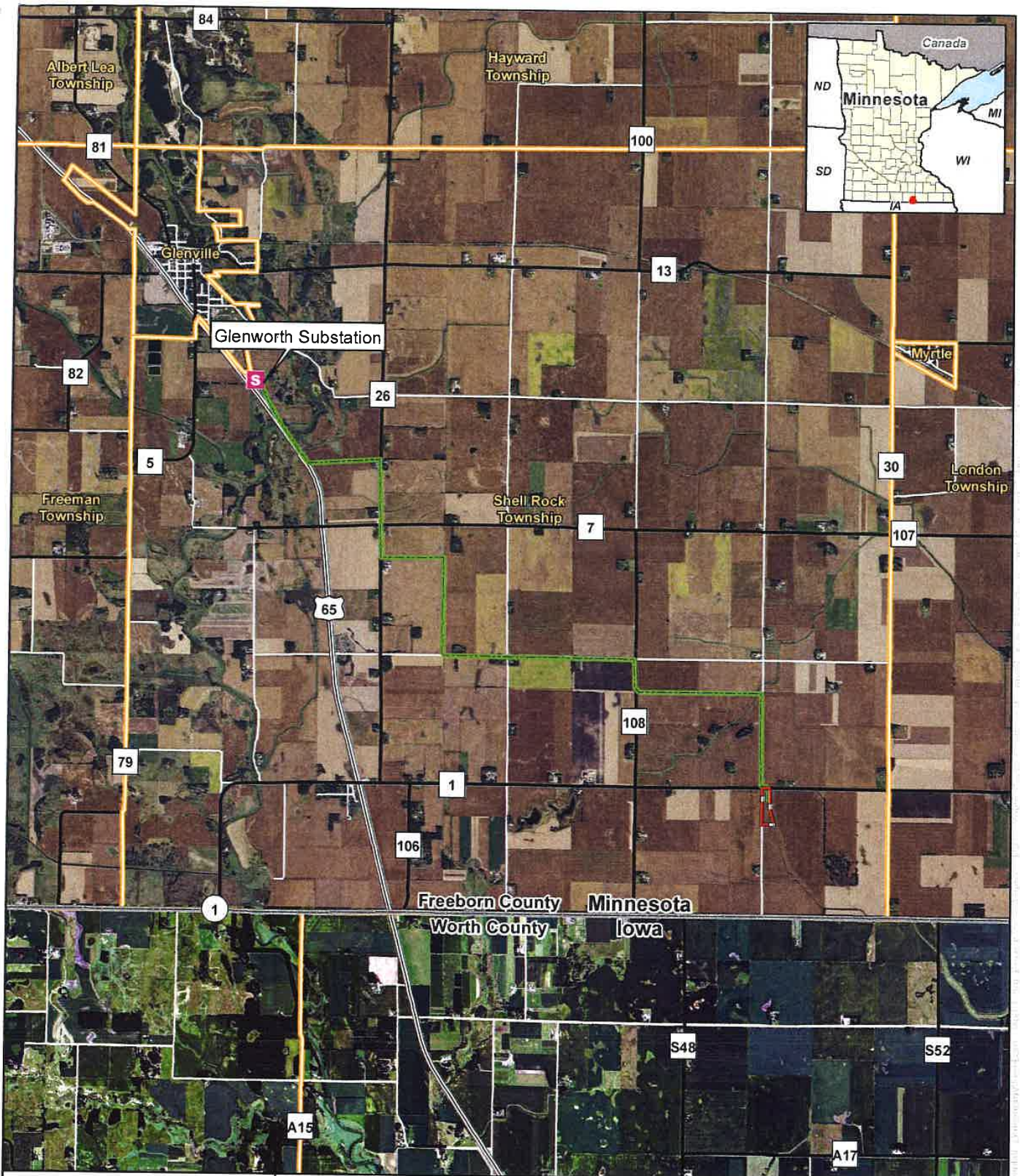
We would appreciate hearing from you by May 15, 2017 to ensure that we have adequate time to address questions or concerns in our Route Permit Application.

Sincerely,

Freeborn Wind Energy LLC

Dan Litchfield
Senior Manager, Project Development Enc. Freeborn Wind Proposed Transmission Line Route Map

Enc. Freeborn Wind Proposed Transmission Line Route Map



0 0.5 1 Miles

1 inch = 1 miles

merjent

FREEBORN

For Environmental Review Purposes Only

Figure 1
Freeborn Wind
Proposed Transmission Line Route Map
Freeborn County, MN

- Existing Substation
- Proposed Transmission Line
- Proposed O&M and Project Substation
- City/Township Boundary

Sue G. Miller

From: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Sent: Friday, June 16, 2017 9:09 AM
To: glenmath@frontiernet.net; Christopher Shoff; ccmikelee@yahoo.com; dbelshan@clear.lakes.com
Cc: Hayley Pirsig; Sue G. Miller; Kelly Callahan
Subject: RE: Freeborn wind farm update

Follow Up Flag: Follow up
Flag Status: Completed

The application for our proposed wind farm is now online:

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={F76DF730-2CD0-4517-A7B8-31F1DE48E1E9}&documentTitle=20176-132804-01>

We don't have a docket page yet, but will in about a week and in the meantime if you want to see what was posted, you can also search eDockets by entering 17-410 for the wind farm: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showeDocketsSearch&showEdocket=true&userType=public>

As we detail in the application, we are proposing 42 turbines in Freeborn County that would occupy only 33 acres of farmland and would produce almost \$400,000 per year in new local tax revenue.

Please let me know if you have any questions.

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC
@danlitch

From: Litchfield, Daniel
Sent: Friday, June 02, 2017 10:51 AM
To: glenmath@frontiernet.net; christopher.shoff@co.freeborn.mn.us; ccmikelee@yahoo.com; 'dbelshan@clear.lakes.com' <dbelshan@clear.lakes.com>
Cc: 'hayley.pirsig@co.freeborn.mn.us' <hayley.pirsig@co.freeborn.mn.us>; Susan G. Miller (sue.miller@co.freeborn.mn.us) <sue.miller@co.freeborn.mn.us>; 'kelly.callahan@co.freeborn.mn.us' <kelly.callahan@co.freeborn.mn.us>
Subject: Freeborn wind farm update

Dear Freeborn County Commissioners,

When we last met I pledged to get our permit application filed by June 1 and I wanted to let you know that we have missed that date. I do hope to file the application with the state by the end of next week, so it is not a significant delay. If you have any questions, please ask.

Sincerely,

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606

dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC
@danlitch

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Sue G. Miller

From: Sue G. Miller
Sent: Monday, July 17, 2017 10:37 AM
To: 'Litchfield, Daniel'
Cc: Kelly Callahan
Subject: RE: Freeborn wind farm road agreement discussions

Tuesday, July 25th would only work for me as I am booked for MnDOT Disaster Review committee on July 28. Does 1 pm work for you? We can meet out here at the Highway shop, 3300 Bridge Avenue in our conference room. I will try to see if others can attend as well.

Thanks Dan!
sue

From: Litchfield, Daniel [mailto:DLitchfield@inverenergyllc.com]
Sent: Monday, July 10, 2017 7:42 PM
To: Sue G. Miller
Cc: Kelly Callahan
Subject: RE: Freeborn wind farm road agreement discussions

Sure. Tuesday-Friday could work just fine for me. Any preference?

Dan Litchfield | Senior Manager, Project Development
Inverenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@inverenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InverenergyLLC
@danlitch

From: Sue G. Miller [mailto:Sue.Miller@co.freeborn.mn.us]
Sent: Monday, July 10, 2017 8:52 AM
To: Litchfield, Daniel <DLitchfield@inverenergyllc.com>
Cc: Kelly Callahan <Kelly.Callahan@co.freeborn.mn.us>
Subject: Re: Freeborn wind farm road agreement discussions

I will be out of the office most of that week for meetings out of town. Can we look at the following week?

On Jul 7, 2017, at 3:42 PM, Litchfield, Daniel <DLitchfield@inverenergyllc.com> wrote:

Hi Sue,

I will be back in your area the week after next. Would you, Kelly and possibly Wayne Sorensen (if he is going to be involved) like to meet on Thursday the 20th to discuss a first draft 3-part agreement?

Dan Litchfield | Senior Manager, Project Development
Inverenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606

dliitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 |
@InvenergyLLC @danlitch

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Sue G. Miller

From: Sue G. Miller
Sent: Monday, July 17, 2017 10:54 AM
To: Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Cc: Wayne Sorensen
Subject: Invenergy Meetings

Good Morning folks:

Dan Litchfield from Invenergy would like to meet on Tuesday July 25th with County staff. I have proposed 1 pm in the Freeborn County Highway Conference room.

What would you all think of meeting later this week to review and discuss internally first. Anytime on Thursday morning would work for me or most of the day Friday, but if on Friday, can we do it out here at the Hwy shop as we are short staffed and I need to be a little more accessible.

I placed the most recent southern MN wind farm development documents in a folder on the Common drive under Invenergy/SW MN. Every iteration yields a better agreement 😊

Thanks.

sue

Susan G. Miller
Freeborn County Engineer
3300 Bridge Avenue
Albert Lea, MN
sue.miller@co.freeborn.mn.us
(507) 377-5138

Sue G. Miller

From: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Sent: Monday, July 17, 2017 10:56 AM
To: Sue G. Miller
Cc: Kelly Callahan
Subject: Re: Freeborn wind farm road agreement discussions

Good morning Sue and Kelly,

Yes, Tuesday 7/25 at 1 PM at Sue's office will work for me. I'll block that time off and we can be in touch later this week to create an agenda for the meeting. I may have some folks from Xcel interested in joining too if that's ok. They are very interested in a smooth handover from us and extending you their assurances they will be a good neighbor and take care of the public infrastructure, etc.

Dan Litchfield
773-318-1289

----- Original message -----

From: "Sue G. Miller" <Sue.Miller@co.freeborn.mn.us>
Date: 7/17/17 10:37 AM (GMT-06:00)
To: "Litchfield, Daniel" <DLitchfield@invenergyllc.com>
Cc: Kelly Callahan <Kelly.Callahan@co.freeborn.mn.us>
Subject: RE: Freeborn wind farm road agreement discussions

Tuesday, July 25th would only work for me as I am booked for MnDOT Disaster Review committee on July 28. Does 1 pm work for you? We can meet out here at the Highway shop, 3300 Bridge Avenue in our conference room. I will try to see if others can attend as well.

Thanks Dan!
sue

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Sent: Monday, July 10, 2017 7:42 PM
To: Sue G. Miller
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@danlitch

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Sent: Monday, July 10, 2017 8:52 AM

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Cc: Kelly Callahan <Kelly.Callahan@co.freeborn.mn.us>
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[@InverenergyLLC](#) [@danlitch](#)

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Sue G. Miller

From: Wayne Sorensen
Sent: Monday, July 17, 2017 1:16 PM
To: Sue G. Miller; Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Subject: RE: Invenergy Meetings

Kelly,

Do you wish for me to participate? Going forward I will not be involved, but perhaps some of my experience would be helpful.

Either way let me know.

Thanks, Wayne

PS. Thursday before 10:30 would not work

From: Sue G. Miller
Sent: Monday, July 17, 2017 10:54 AM
To: Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Cc: Wayne Sorensen
Subject: Invenergy Meetings

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I placed the most recent southern MN wind farm development documents in a folder on the Common drive under Invenergy/SW MN. Every iteration yields a better agreement 😊

Thanks.

sue

Susan G. Miller
Freeborn County Engineer
3300 Bridge Avenue
Albert Lea, MN
sue.miller@co.freeborn.mn.us
(507) 377-5188

Sue G. Miller

From: David Walker
Sent: Monday, July 17, 2017 1:49 PM
To: Sue G. Miller; Kelly Callahan; Wayne Sorensen; Winston Beiser
Cc: Wayne Sorensen
Subject: RE: Invenergy Meetings

Good Afternoon,

I would be happy to participate in the meeting. I MAY be available on July 25th. Jury trials are scheduled on that date. If they all settle, the day will be open for me.

I am available late Thursday morning this week and Friday afternoon.

Please advise.

David

David Walker
Freeborn County Attorney



Freeborn County Attorney's Office

411 South Broadway Avenue

Albert Lea, MN 56007

(507) 377-5192

www.co.freeborn.mn.us/attorney

From: Sue G. Miller
Sent: Monday, July 17, 2017 10:54 AM
To: Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Cc: Wayne Sorensen
Subject: Invenergy Meetings

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sue

Susan g. Miller
Freeborn County Engineer
3300 Bridge Avenue
Albert Lea, MN
sue.miller@co.freeborn.mn.us
(507) 377-5188

Sue G. Miller

From: Kelly Callahan
Sent: Monday, July 17, 2017 2:01 PM
To: Sue G. Miller; David Walker; Wayne Sorensen; Winston Beiser
Cc: Wayne Sorensen
Subject: RE: Invenergy Meetings

Thursday (earlier in the AM – I have an 11:30 speaking engagement) or Friday works for me.

From: Sue G. Miller
Sent: Monday, July 17, 2017 10:54 AM
To: Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Cc: Wayne Sorensen
Subject: Invenergy Meetings

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Thanks.

sue

Susan G. Miller
Freeborn County Engineer
3300 Bridge Avenue
Albert Lea, MN
sue.miller@co.freeborn.mn.us
(507) 377-5188

Sue G. Miller

From: Kelly Callahan
Sent: Monday, July 17, 2017 2:05 PM
To: Wayne Sorensen; Sue G. Miller; David Walker; Wayne Sorensen; Winston Beiser
Subject: RE: Invenergy Meetings

I would appreciate that if possible, since you were involved with the Bent Tree project.

From: Wayne Sorensen
Sent: Monday, July 17, 2017 1:16 PM
To: Sue G. Miller; Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Subject: RE: Invenergy Meetings

Kelly,

Do you wish for me to participate? Going forward I will not be involved, but perhaps some of my experience would be helpful.

Either way let me know.

Thanks, Wayne

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To: Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
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Thanks.

sue

Susan G. Miller
Freeborn County Engineer
3300 Bridge Avenue
Albert Lea, MN

Sue G. Miller

From: Winston Beiser
Sent: Monday, July 17, 2017 3:31 PM
To: Sue G. Miller; Kelly Callahan; David Walker; Wayne Sorensen
Cc: Wayne Sorensen
Subject: RE: Invernergy Meetings

Either day works for me as of now.

Winston Beiser

From: Sue G. Miller
Sent: Monday, July 17, 2017 10:54 AM
To: Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Cc: Wayne Sorensen
Subject: Invernergy Meetings

Good Morning folks:

Dan Litchfield from Invernergy would like to meet on Tuesday July 25th with County staff. I have proposed 1 pm in the Freeborn County Highway Conference room.

What would you all think of meeting later this week to review and discuss internally first. Anytime on Thursday morning would work for me or most of the day Friday, but if on Friday, can we do it out here at the Hwy shop as we are short staffed and I need to be a little more accessible.

I placed the most recent southern MN wind farm development documents in a folder on the Common drive under Invernergy/SW MN. Every iteration yields a better agreement 😊

Thanks.

sue

Susan G. Miller
Freeborn County Engineer
3300 Bridge Avenue
Albert Lea, MN
sue.miller@co.freeborn.mn.us
(507) 377-5188



JOB 7/11/17 Brd Mtg (Wind)
 JOB NO. 953:38
 CALCULATED BY _____ DATE _____
 CHECKED BY _____ DATE _____

Ordinance 1141' Required setbacks

Open fields project
 4 towers < 1500'
 1 is a participating licensee
 2 may have good neighbor agreement

1100' w/ participating
 1240' - Schumacher
 1300'
 1390'

42 towers total in Trexler County
 1470'
 1495'

discussions @ 7/11/17 10:00 AM
 County Board Meeting under Commissioner Items
 would eliminate this tower to > setbacks due to other setbacks

PUC application says 1120' ~~1120'~~ 142 turbines?
 FC Ordinance 20-51 says 1,000' setbacks
 + 15 towers - 17 towers within 1500' from PUC docket

Sue G. Miller

From: David Walker
Sent: Tuesday, July 18, 2017 2:35 PM
To: Sue G. Miller
Subject: Invenergy Meetings

Sue,

...just to confirm:

Meeting #1: Thursday, July 20 at 10:30, County Atty conference rm

Meeting #2: Tuesday, July 25 at 1:00, County Atty conference rm (but I may be in a Jury trial)

Right?

David

From: Kelly Callahan
Sent: Monday, July 17, 2017 2:05 PM
To: Wayne Sorensen; Sue G. Miller; David Walker; Wayne Sorensen; Winston Beiser
Subject: RE: Invenergy Meetings

I would appreciate that if possible, since you were involved with the Bent Tree project.

From: Wayne Sorensen
Sent: Monday, July 17, 2017 1:16 PM
To: Sue G. Miller; Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Subject: RE: Invenergy Meetings

Kelly,

Do you wish for me to participate? Going forward I will not be involved, but perhaps some of my experience would be helpful.

Either way let me know.

Thanks, Wayne

PS. Thursday before 10:30 would not work

From: Sue G. Miller
Sent: Monday, July 17, 2017 10:54 AM
To: Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Cc: Wayne Sorensen
Subject: Invenergy Meetings

Good Morning folks:

Dan Litchfield from Invenergy would like to meet on Tuesday July 25th with County staff. I have proposed 1 pm in the Freeborn County Highway Conference room.

What would you all think of meeting later this week to review and discuss internally first. Anytime on Thursday morning would work for me or most of the day Friday, but if on Friday, can we do it out here at the Hwy shop as we are short staffed and I need to be a little more accessible.

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Thanks.

sue

Susan g. Miller
Freeborn County Engineer
3300 Bridge Avenue
Albert Lea, MN
sue.miller@co.freeborn-mn.us
(507) 377-5188

Sue G. Miller

From: Sue G. Miller
Sent: Tuesday, July 18, 2017 3:04 PM
To: David Walker
Subject: Re: Invenergy Meetings

Meeting on Tuesday July 25 is out at highway. Will be a larger group with Invenergy and Xcel folks attendance.

On Jul 18, 2017, at 2:34 PM, David Walker <David.Walker@co.freeborn.mn.us> wrote:

Sue,

...just to confirm:

Meeting #1: Thursday, July 20 at 10:30, County Atty conference rm

Meeting #2: Tuesday, July 25 at 1:00, County Atty conference rm (but I may be in a Jury trial)

Right?

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Either way let me know.

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From: Sue G. Miller
Sent: Monday, July 17, 2017 10:54 AM
To: Kelly Callahan; David Walker; Wayne Sorensen; Winston Beiser
Cc: Wayne Sorensen
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I placed the most recent southern MN wind farm development documents in a folder on the Common drive under Invenergy/SW MN. Every iteration yields a better agreement ☺

Thanks.

sue

Susan G. Miller
Freeborn County Engineer
3300 Bridge Avenue
Albert Lea, MN
sue.miller@co.freeborn.mn.us
(507) 377-5188

Sue G. Miller

From: Winston Beiser
Sent: Thursday, July 20, 2017 11:40 AM
To: Kelly Callahan; Sue G. Miller; David Walker; Wayne Sorensen
Subject: Wind Farm Development Agreement items 5-15-15
Attachments: Wind Farm Development Agreement items 5-15-15.docx

Here are some items I put together after consulting with Morreim Drainage on some lessons learned from the Bent Tree experience.

Thanks,

Winston Beiser



WINSTON BEISER, DRAINAGE INSPECTOR
Government Center, P.O. Box 1147, 411 S. Broadway
Albert Lea, Minnesota 56007
Telephone 507/379-2962 Fax 507/377-5175
Cell 507/320-0552 Home 507/265-3416



WINSTON BEISER, DRAINAGE INSPECTOR
 Government Center, P.O. Box 1147, 411 S. Broadway
 Albert Lea, Minnesota 56007
 Telephone 507/379-2962 Fax 507/377-5175
 Cell 507/320-0552 Home 507/265-3416

7-19-2017

By Winston Beiser

Wind Farm Development Agreement

Items to include with a Wind Farm Development Agreement

- 1- The electric collector lines should be installed with a "chain trencher" and all collector lines must have a minimum 5.5 feet of cover over the collector line. A shallower cover could be allowed where it is determined that the County Tile is at that depth and a shallower installation of the collector line would avoid the lines being at the same depth. When a shallow large main tile is crossed the County Drainage Authority can require the collector line be bored under the main tile.
- 2- The developer would employ a local Tile Drainage Contractor to have a person / repair crew on site at the time of any installation of collector lines so that the identification of cut tile lines would be immediately flagged and Geo Tagged and repaired by a crew of the local Tile Contractor immediately.
- 3- All County Ditches that are crossed with a collector line would be bored to a sufficient depth to allow for future ditch cleaning and a possible deeper flow line of the County Ditch.
- 4- To lessen soil compaction and tile line damage on the crane paths between turbine towers, the developer would utilize moveable crane mats while moving cranes between towers.
- 5- Before the developer applies for a permit for the exact location of each tower the developer must work with the Drainage Authority or their designated Drainage Inspector to determine if there is a main tile line 8" or larger underneath or very close to the footprint of the tower and then relocate the tower away from that main tile. This would not apply to small regular tile laterals. When the contractor is digging the hole for the turbine pad and pinches off a tile line the contractor must identify the exact location and the size and type of tile line pinched off

at conflict areas only

typical

gis conflict points

2' below recorded grade?

how to define

IMPROVEMENT

Private issue

gis conflict points

tough sell?

6- In reference to Construction Related Damages to county and private tile lines, the developer would retain a local Tile Contractor to repair any undiscovered damage for 10 years afterwards instead of 5 years.

Board has authority on private systems

7- The County Board can choose to direct a person to represent the Private Ditch and Tile systems of the affected landowners in the wind farm footprint to coordinate with the Developer the same provisions as with the County Ditch and Tile systems.

8- Developer is required to bury a "tracer wire" with all fiber optic communication lines installed within the Wind Farm. *standard*

landowners should be protecting themselves within their own agreement

Sue G. Miller

From: Sue G. Miller
Sent: Thursday, July 20, 2017 2:40 PM
To: 'Litchfield, Daniel'
Cc: Kelly Callahan; David Walker
Subject: RE: Freeborn wind farm road agreement discussions

Hi Dan,

Mr. Walker has confirmed that he will not be able to be in attendance.

Thank you!

sue

From: Litchfield, Daniel [mailto:DLitchfield@inveneryllc.com]
Sent: Thursday, July 20, 2017 10:15 AM
To: Sue G. Miller
Cc: Kelly Callahan; David Walker
Subject: RE: Freeborn wind farm road agreement discussions

Sue –

When do you think you can confirm whether the County Attorney will attend? Is that Mr. Walker, copied here? I ask because I would welcome his attendance and if he is able to attend, I'd like to bring our attorney as well.

Dan Litchfield | Senior Manager, Project Development
Invenery | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@inveneryllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InveneryLLC
@danlitch

From: Sue G. Miller [mailto:Sue.Miller@co.freeborn.mn.us]
Sent: Wednesday, July 19, 2017 10:40 AM
To: Litchfield, Daniel <DLitchfield@inveneryllc.com>
Cc: Kelly Callahan <Kelly.Callahan@co.freeborn.mn.us>; David Walker <David.Walker@co.freeborn.mn.us>
Subject: RE: Freeborn wind farm road agreement discussions

Hi Dan –

I received your voicemail regarding confirmation of next week's meeting. Kelly and I for sure will be able to meet with you and Xcel folks. Our County Attorney may be in a jury trial so his attendance is tentative at this point.

Regarding agenda for the meeting, I would assume this meeting to be considered the initial discussion regarding the formulation of a developers agreement. In the coming weeks, the County will need to meet with townships to see if they would like the County to act on their behalf as road authority for the purposes of the project. Any documents you have regarding tower siting, access requests, utility requests, drainage system impacts, etc. would be great so we can get a draft agreement for all to review.

See you next week.

sue

From: Litchfield, Daniel [<mailto:DLitchfield@invenergyllc.com>]
Sent: Monday, July 17, 2017 10:56 AM
To: Sue G. Miller
Cc: Kelly Callahan
Subject: Re: Freeborn wind farm road agreement discussions

Good morning Sue and Kelly,

Yes, Tuesday 7/25 at 1 PM at Sue's office will work for me. I'll block that time off and we can be in touch later this week to create an agenda for the meeting. I may have some folks from Xcel interested in joining too if that's ok. They are very interested in a smooth handover from us and extending you their assurances they will be a good neighbor and take care of the public infrastructure, etc.

Dan Litchfield
773-318-1289

----- Original message -----

From: "Sue G. Miller" <Sue.Miller@co.freeborn.mn.us>
Date: 7/17/17 10:37 AM (GMT-06:00)
To: "Litchfield, Daniel" <DLitchfield@invenergyllc.com>
Cc: Kelly Callahan <Kelly.Callahan@co.freeborn.mn.us>
Subject: RE: Freeborn wind farm road agreement discussions

Tuesday, July 25th would only work for me as I am booked for MnDOT Disaster Review committee on July 28. Does 1 pm work for you? We can meet out here at the Highway shop, 3300 Bridge Avenue in our conference room. I will try to see if others can attend as well.

Thanks Dan!
sue

From: Litchfield, Daniel [<mailto:DLitchfield@invenergyllc.com>]
Sent: Monday, July 10, 2017 7:42 PM
To: Sue G. Miller
Cc: Kelly Callahan
Subject: RE: Freeborn wind farm road agreement discussions

Sure. Tuesday-Friday could work just fine for me. Any preference?

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC
@danlitch

From: Sue G. Miller [<mailto:Sue.Miller@co.freeborn.mn.us>]
Sent: Monday, July 10, 2017 8:52 AM
To: Litchfield, Daniel <DLitchfield@invenergyllc.com>

Cc: Kelly Callahan <Kelly.Callahan@co.freeborn.mn.us>
Subject: Re: Freeborn wind farm road agreement discussions

I will be out of the office most of that week for meetings out of town. Can we look at the following week?

On Jul 7, 2017, at 3:42 PM, Litchfield, Daniel <DLitchfield@inenergyllc.com> wrote:

Hi Sue,

I will be back in your area the week after next. Would you, Kelly and possibly Wayne Sorensen (if he is going to be involved) like to meet on Thursday the 20th to discuss a first draft 3-part agreement?

Dan Litchfield | Senior Manager, Project Development
Inenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@inenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 |
@InenergyLLC @danlitch

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87340 135th St
Glenville, MN 56036

MINNEAPOLIS MN 553

18 JUL 2018 PM 7 L



Freedom Seventy Highway Dept.
3300 Bridge Ave.
Albert Lea, MN 56007

56007-424800



London Township

90314 2nd St.

Glenville, MN 56036

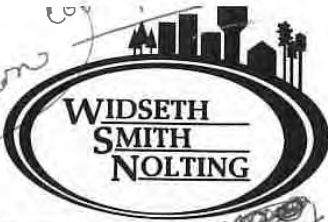
Sue Miller,

Thank you, but at this time London Township has decided to decline the County's road ordinance written up for the Freeborn Wind Farm Project. We will be following our own ordinance relating to the Oversize Truck Use, Resolution #17-1, written up by Messerli & Kramer PA. For any questions or comments, please contact Daniel Schleck at 612.672.3683.

Thanks,

London Township Board of Supervisors

Site Kelly Winston



JOB ^{WVIA} Freeborn ~~and~~ Development 1pm
Construction 202-0 JOB NO. July 25
CALCULATED BY _____ DATE Kelly 1:10 pm
CHECKED BY _____ DATE asleep by 1:45 pm

manage contractors

Sarah X
Tricia X
(community relations)
local governments

Chad
Burlingame
(Land Rights)

Emanuel X
(Construction)

Dan L. I
(Developer)

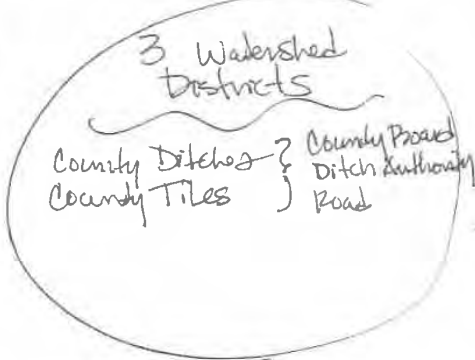
Project manager
never done road agreements

- Introductions
- Project facilities
- Public ROW (gaps in easements)
- Road Agreement
- O&M yard

Concerns

- agreements w/ insurance to XCEL to Contractor X & Z
- crane walks

Stutsman County ND



△ from Bent tree

more spread out larger turbines

Rotor...

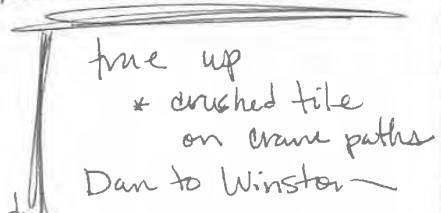
gaps in ROW

Dan circle

- log and tarp
 - 8th Av (twp)
 - T-69
 - @SAH 30
- Use of ROW

WB?

- private tiles
 - size warranty & use of local
 - — Dan in the lease
- Wouldn't be opposed!



County tiles

placement of the pads

Abrahms farm
@ Ellingson drainage

Winston > depth for collector line should be at 5' to 5.5'



JOB _____

JOB NO. _____

CALCULATED BY _____ DATE _____

CHECKED BY _____ DATE _____

WB wants a chain trencher
and at 5' to 5' 5"
and Morniem - shouldn't recommend

(*) turbine 31

CL 3 / CL 4 Wetland

2.9 Roto diameters → ordinance

118 planned

110 → 2dB quieter

} possibility
of
variance

yellow line above ground transmission line

3 part agreement

Road

Drainage

Development

} *



JOB _____

JOB NO. _____

CALCULATED BY _____ DATE _____

CHECKED BY _____ DATE _____

August 10 Public Hearing

July 6 completeness

July 13 reply

Aug 10 - hearing on completeness

Sept / Oct public hearing

w/ ~~open~~ open public comment period

Early September; next meeting w/ us

(*) Sue to send letter to all 4 twps.
Ask to attend August twp mtgs
Ask for yea or nca to twp resolution
before early October 2017

Sue G. Miller

From: Rich Brumm <richard.brumm@worthcounty.org>
Sent: Tuesday, July 25, 2017 12:56 PM
To: Sue G. Miller
Subject: Re: wind
Attachments: Invenergy Road Agreement - Worth County_61773198(4)-c.docx;
freeborn_roadagreements_ia_11x17l_20170720.pdf

Sue,

This is the latest and probably final version of the agreement.

Rich

On Tue, Jul 25, 2017 at 11:29 AM, Sue G. Miller <Sue.Miller@co.freeborn.mn.us> wrote:

Hi Rich:

Wondering what you have agreed to for road use agreements with the Freeborn Wind Development. Can you give me a call to discuss sometime?

Thanks.

sue

Susan G. Miller

Freeborn County Engineer

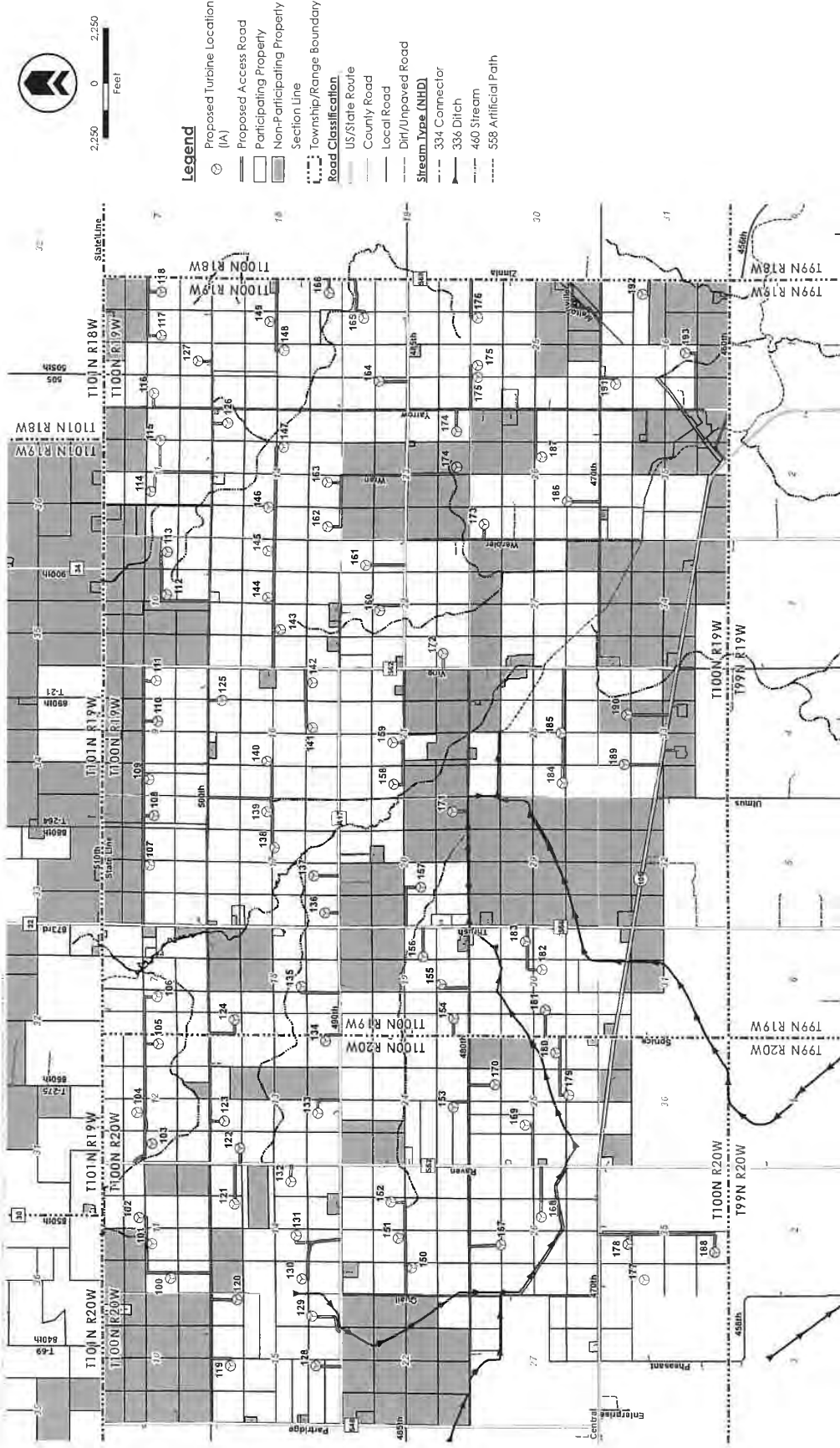
3300 Bridge Avenue

Albert Lea, MN

sue.miller@co.freeborn.mn.us

(507) 377-5188

--
Richard C. Brumm, PE
County Engineer
Mitchell Co. 641-732-5849
Worth Co. 641-324-2154



Road Agreement Summary

Freedom Wind Energy Project | Worth County, Iowa

Rev 00
July 20, 2017

Invenery

**ROAD AND DRAINAGE EASEMENT AND MAINTENANCE
AGREEMENT
Recorder's Cover Sheet**

Preparer Information: Jennifer Hodge Burkett
(Name & Address of Preparer) 505 East Grand Avenue, Ste. .200
Des Moines, IA 50309
515-242-8900

Taxpayer Information: _____
(Name & Address of Owner) _____

Return Document To: Jennifer Hodge Burkett
505 East Grand Avenue, Ste. 200
Des Moines, IA 50309

Grantors: Board of Supervisors of Worth County, Iowa and
Board of Supervisors as Trustees of Drainage Districts in Worth County, Iowa

Grantees: Freeborn Wind Energy LLC

Legal Description: See Exhibit B

Document or instrument number of previously recorded documents: N/A

**ROAD AND DRAINAGE EASEMENT AND MAINTENANCE
AGREEMENT**

THIS ROAD AND DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2017, by and among Freeborn Wind Energy LLC, a Delaware limited liability company ("Freeborn Wind"), the Board of Supervisors of Worth County, Iowa ("Board of Supervisors", "Worth County" or "County"), and the Board of Supervisors of Worth County, Iowa as Trustees of Drainage Districts in Worth County, Iowa ("Trustees") (to the extent the Drainage Districts in Worth County, Iowa are applicable, "Worth County" or the "County" shall include both the Board of Supervisors and the Trustees; Freeborn Wind and County are sometimes referred to individually as a "Party" or collectively as the "Parties").

RECITALS:

- A. Freeborn Wind desires to develop, construct and operate a wind-powered electrical generating facility in Worth County (the "Project") with all necessary associated facilities such as underground power collection lines and access roads.
- B. The Parties agree that it is in the best interest of each to memorialize the rights, obligations, and responsibilities of the Parties with respect to Freeborn Wind's use of Worth County roads and rights-of-way during construction and operation of the Project, as well as potential repair of Worth County public drainage infrastructure.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement hereby stipulate and agree as follows:

- 1. **Planning**
 - a. **Preliminary Site Plan.** Exhibit A is a preliminary plan for construction of aboveground facilities in Worth County. At least ninety (90) days prior to the start of construction, Freeborn Wind shall meet with the County Engineer (the "pre-construction meeting") to present a final plan for use of public roads (the "Haul Roads"), including temporary modifications to the roads such as widened intersections. Freeborn Wind shall advise the County Engineer of plans for heavily-laden vehicles and/or equipment over Worth County's public roads, and in the event the County Engineer identifies a reasonable safety concern regarding the load-bearing capacity of any road or structure, said road or structure shall not be used for the transportation of any heavily laden vehicles or equipment until the safety concern has been alleviated. Such alleviation can include a mutually agreeable alternate route or temporary upgrades to the deficient road or

structure, and such alternates shall not be unreasonably conditioned or delayed.

- b. Initial Evaluation. At the pre-construction meeting, the parties shall decide upon a scope of work for evaluating the condition of the roads and Drainage Infrastructure immediately prior to construction, which Freeborn Wind shall carry out at its expense. Freeborn Wind shall present a complete copy of the evaluation (the "Initial Evaluation") to the County Engineer prior to starting construction.
- c. Later changes. The parties recognize that despite good faith efforts, additional information may later reveal needs to modify some portions of the plans for use of public roads and crossing of Drainage Infrastructure and the parties agree to collaborate in good faith to address any changes necessary to such plans.

2. **Use of Rights-of-Way and Drainage Infrastructure**

a. Use. The Parties anticipate and acknowledge that in connection with the construction, operation and maintenance of electric collection lines, conductors, cables and other equipment appurtenant thereto (collectively, the "Facilities"), Freeborn Wind will use Worth County road rights-of-way and the County grants Freeborn Wind an easement to use such road rights-of-way as set forth in this Agreement. It is further anticipated that all right-of-way crossings of paved roadways will be by underground borings perpendicular to the rights-of-way, plus or minus thirty (30) degrees. All underground borings across any right-of-way shall commence and terminate outside of the right-of-way. No boring shall be made across a right-of-way at the intersection of rights of way. Trenching across gravel roadways may be approved with permission of the County Engineer. The County also grants Freeborn Wind an easement to cross rights-of-way to walk heavy lift construction cranes from one turbine site to another, and the Trustees grant Freeborn Wind an easement to maintain the Facilities along, over, through or across the public drainage infrastructure owned by drainage districts managed by the Worth County Board of Supervisors as Trustees (the "Drainage Infrastructure"). The parties intend that this agreement, and the grants contained herein, shall constitute an easement and shall satisfy the requirements for an easement in Iowa Code Chapter 468.

b. Ownership. The Facilities installed pursuant to this Agreement shall remain the property of Freeborn Wind. Notwithstanding the foregoing, Freeborn Wind shall have the right to sell, assign, or lease all or portions of its Facilities to other parties and, in that event, such other parties shall, with Freeborn Wind or, in the event of a total assignment or transfer, in lieu of Freeborn Wind, have the right, in the manner and to the same extent above, to operate the Facilities in, along, under, and across said rights-of-way and Drainage Infrastructure. Freeborn Wind, its successors or assigns, shall, at all times and at its sole cost and expense, maintain the Facilities in good condition and repair, ordinary wear and tear excepted.

c. Termination. In the event the Project is terminated by Freeborn Wind, Freeborn Wind shall remove all the Facilities above four feet below grade in, along, and across certain rights of way in Worth County within twenty four months of such termination.

3. Obligations of Freeborn Wind

a. Road Repair Obligations. Throughout the construction of the Project, Freeborn Wind shall maintain public road infrastructure in a safe condition for passage by the public. At the conclusion of construction, Freeborn Wind, at its expense, shall repair any damage to the Haul Roads due to any cause connected with the Project, but excluding repair caused by the County's negligence or intentional misconduct, to as-good or better than the condition they were in prior to construction, as documented in the Initial Evaluation (the "Road Repair Obligations"). The Parties shall rely upon the Initial Evaluation for purposes of determining the type of repair required. Upon completion of the repair, Freeborn Wind and the County Engineer will jointly inspect the repair to determine if it has been completed in accordance with the standard set forth in this Section. In the event a hazardous road condition exists that presents a likely safety hazard to the motoring public (a "hazardous road condition") and is not promptly corrected by Freeborn Wind after receipt of notice of the same, the County Engineer may make emergency road repairs or order emergency road repairs to be performed by qualified contractors, and Freeborn Wind shall promptly reimburse Worth County for reasonable emergency road repair costs. Except in the case of emergency road repair, Freeborn Wind shall notify the County Engineer's Office forty-eight (48) hours in advance of any road repair project and/or the closing or partial closing of any road in connection with the road repair project. Weather permitting, the final Road Repair Obligations shall be completed to the reasonable satisfaction of the County Engineer within six (6) months after the completion of construction of the Project as determined by Freeborn Wind, or as soon thereafter as weather conditions permit, or as mutually agreed upon by the Parties. Road repair shall include restoration of original configuration (as documented in the Initial Evaluation) of ditches, slopes, embankments or fills within the right-of-way unless special circumstances dictate otherwise and specific approval has been requested by Freeborn Wind and granted by the County Engineer. In the event it becomes necessary to remove or displace any traffic control device along the transportation routes, the same shall be reinstalled by Freeborn Wind at their original locations and restored to their original condition. All materials and construction methods shall be equal to or better than the standards established by AASHTO for "utilities within highway right of way." All warning and work zone signs shall comply with the "Uniform Manual for Traffic Control Devices." Road closures shall only be allowed after notification to the County Engineer in person or by telephone.

b. Emergency Services. To the extent Freeborn Wind's construction or operation of the Project results in an increase in expenses for emergency services provided by Worth County (e.g., increased emergency personnel

training and equipment), Freeborn Wind agrees to pay directly to the County its allocable share of such increased expenses as determined in good faith by the Parties with reference to documentation supporting such increase in expenses.

c. Drainage Infrastructure. If Drainage Infrastructure is damaged by Freeborn Wind, Freeborn Wind shall restore the Drainage Infrastructure to its Pre-existing Condition. Notwithstanding the foregoing, to the extent required by Iowa Code Section 468.186, if Freeborn Wind's actions disturb or cause replacement of any portion of a tile drain less than twenty inches in diameter and a portion of such drain will remain wholly or partially exposed after the project has been completed, the portion which is to remain exposed and not less than three feet of such drain immediately on either side of the portion which is to remain exposed, shall be replaced either with steel pipe of not less than sixteen gauge or polyvinyl chloride pipe conforming to current industry standards regarding diameter and wall thickness. For the purposes of this Agreement, "Pre-existing Condition" shall mean the flow capacity existing immediately prior to Freeborn Wind commencing construction of the Project. Freeborn Wind is responsible for all expenses related to repairs, relocations, reconfigurations, and replacements to the Drainage Infrastructure in accordance with this Agreement.

4. Obligations of Worth County. Worth County agrees to furnish Freeborn Wind with any and all road construction and maintenance records it has on the Haul Roads and any drainage district maps within sixty (60) days upon written notice from Freeborn Wind. Worth County agrees to make the County Engineer or his designee available to perform his obligations as set forth herein. Worth County shall give timely notification to Freeborn Wind of any conditions which come to its attention and may give rise to damage to the Drainage Infrastructure, a Road Repair Obligation or which would constitute a "hazardous road condition" as described in Paragraph 3(a) above. On a negotiated case by case basis, Worth County will perform snow removal on its Schedule B roads that are required to access wind turbine access roads.

5. Cooperation. Freeborn Wind and the County agree to communicate and cooperate in good faith concerning the safe construction and operation of the Project and preventing or correcting any hazardous road condition that may be created by the Project.

6. Indemnification. Freeborn Wind agrees to defend, indemnify, and hold harmless Worth County and its supervisors, trustees, administrators, employees, and representatives (collectively the "Indemnified Party") against any and all losses, damages, claims, expenses, including reasonable attorneys' fees, and liabilities for physical damage to the property of Worth County and for physical injury to any person, to the extent the same is a result of any activities or operations of Freeborn Wind, its agents and employees, on the property of the County for the performance or non-performance of its duties pursuant to this Agreement except to the extent caused by the negligence or intentional misconduct of the County. Furthermore, Freeborn Wind agrees to defend, indemnify, and hold harmless the Indemnified ROAD AND DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT, Page 5 of 12 Pages.

Party from any third party claims arising out of terms and conditions of this Agreement, except to the extent that such claims are caused by the negligence or intentional misconduct of the County. This indemnification obligation shall survive the termination of this Agreement.

7. Insurance. Freeborn Wind shall at all times during construction and operation of the Project, carry: (i) Worker's Compensation insurance in accordance with the laws of the State of Iowa and Employer's Liability insurance, (ii) Commercial General Liability insurance with minimum limit of \$5,000,000 per occurrence, and (iii) Automobile Liability insurance with minimum limit of \$1,000,000 per occurrence. Certificates of insurance will be provided to County upon written request to Freeborn Wind.

8. Compliance with Laws. Freeborn Wind shall at all times comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, judgments, and other valid orders of any governmental authority with respect to Freeborn Wind's activities associated with the Project and shall obtain all permits, licenses, and orders required to conduct any and all such activities.

9. Entire Agreement. It is mutually understood and agreed that this Agreement constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings, representations, or statements, and that no understandings, representatives, or statements, verbal or written, have been made which modify, amend, qualify, or affect the terms of this Agreement. This Agreement may not be amended except in writing and executed by both Parties.

10. Default. Any failure by a Party to perform a material obligation hereunder which is not remedied within thirty (30) days after receipt by the defaulting Party of written notice of such failure shall be deemed a default under this Agreement and, in such case, the non-defaulting Party shall be entitled to pursue any remedies available at law or in equity, including terminating this Agreement and collecting reasonable attorneys' fees from the defaulting Party. Notwithstanding the foregoing, so long as the defaulting Party has initiated and is diligently working to cure, the defaulting Party's cure period shall extend for a time period reasonably sufficient for the default to be remedied.

11. Relationship of the Parties. The duties, obligations, and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or constructed to create an association, joint venture, fiduciary relationship, or partnership between the Parties hereto or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. The Parties shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or otherwise to bind, the other Party.

12. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors, assignees and legal representatives.

(i) Assignment Requiring Consent. This Agreement may not be assigned without the written consent of the other Parties and such consent shall not be unreasonably withheld, conditioned or delayed.

(ii) Permitted Assignment. Notwithstanding subparagraph (i) above, Freeborn Wind shall be entitled to assign this Agreement, in whole or in part, without the prior written consent of the County to any affiliate of Freeborn Wind, to any purchaser of any portion of the assets of Freeborn Wind, or to any person or entity providing financing to Freeborn Wind or any such affiliate or any collateral agent or security trustee acting on behalf of any such person or entity (each a "Permitted Assignment"). Any such assignment that is a collateral assignment for financing purposes will not relieve Freeborn Wind of its obligations under this Agreement. In the event of a Permitted Assignment, Freeborn Wind shall, not more than sixty days after such assignment, provide written notice to the County of the name, address, entity type and state of incorporation of the assignee, as well as the name and address of the assignee's registered agent in the State of Iowa. It is understood, however that any assignee shall be bound by the terms and conditions contained within this agreement.

13. Notices. Notices, requests, demands, and other communications shall be sent to the following addresses:

If to Freeborn Wind:

Freeborn Wind Energy LLC
c/o INVENERGY WIND DEVELOPMENT LLC
Attn: Dan Litchfield
One South Wacker Drive
Suite 1900
Chicago, IL 60606
dlitchfield@invenergyllc.com
773-318-1289

If to Worth County:

Worth County Engineer Richard Brumm
1000 Central Ave
Northwood, IA 50459
engineer@worthcounty.org
641-324-2154

All notices shall be in writing. Any notice shall be deemed to be sufficiently given (i) on the date, if delivered in person; (ii) five (5) days after being sent by United States registered or certified mail, postage prepaid, return receipt requested; or (iii) on the next Business Day if sent by overnight delivery service (e.g. Federal Express) to the notified Party at its address set forth above. These addresses shall remain in effect unless another address is

ROAD AND DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT, Page 7 of 12
Pages.

substituted by written notice. Notices may be sent via email transmission the email addresses provided, however, notice sent via email shall be followed by notice delivered by personal service or by registered or certified mail, return receipt requested, or by overnight delivery.

14. Relevant Law. Any and all disputes arising under this Agreement and/or relating to the actual development and/or construction of the Project shall be resolved pursuant to the laws of the State of Iowa.

15. Disputes. Should a dispute arise between the Parties on whether hazardous road conditions exist as defined in Section 2a, such determination shall be made by an independent civil engineer licensed in Iowa and selected by the mutual agreement of the Parties (the "Independent Engineer"). If the parties cannot agree on an independent engineer, they each shall select an independent engineer and the two independent engineers shall select a third independent engineer within thirty days, and this third independent engineer shall be the independent engineer for settling such disputes. Compensation for work performed by the Independent Engineer shall be shared equally by the Parties.

16. Waiver of Breach. No waiver of a breach of this Agreement shall be deemed a waiver of any subsequent breach.

17. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to public policy or unenforceable for any reason, such finding shall not invalidate any other provision of this Agreement and such provision shall be replaced with a suitable and equitable provision in order to carry out, so far as may be valid and enforceable, the extent of such provision that has been found to be contrary to public policy or unenforceable.

18. Binding Effect. This Agreement shall bind the assigns and successors of the respective Parties hereto to the same full degree and extent as the Parties themselves are hereby bound.

19. **Mortgagee Protection.** In the event that any mortgage is entered into by Freeborn Wind, then the mortgagee shall, for so long as its mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this section. Freeborn Wind shall send written notice to Worth County of the name and address of any such mortgagee; provided that failure of Freeborn Wind to give notice of any such mortgagee shall not constitute a default under this Agreement and shall not invalidate such mortgage, however it is understood that any successor in interest to Freeborn Wind, be it a mortgagee, or other entity, shall be bound by the terms and conditions set forth in this agreement.

(a) **Mortgagee's Right to Possession, Right to Acquire and Right to Assign.** A mortgagee of Freeborn Wind shall have the absolute right: (i) to assign its security interest; (ii) to enforce its lien and acquire Freeborn Wind's rights, including without limitation rights to the permit to install, construct,

operate, repair, replace, remove, inspect and perpetually maintain the Facilities, by any lawful means; (iii) to take possession of and operate the Facilities or any portion thereof, to exercise all of Freeborn Wind's rights hereunder, and to perform all obligations to be performed by Freeborn Wind hereunder, or to cause a receiver to be appointed to do so; and (iv) following exercise of its rights under applicable mortgage, to assign or transfer Freeborn Wind's rights to a third party. The County's consent shall not be required for any of the foregoing.

(b) Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any default of Freeborn Wind, the County shall give notice of Freeborn Wind's failure to perform to each mortgagee, of which it has notice, concurrently with delivery of such notice to Freeborn Wind. In the event the County gives such notice of failure to perform, the following provision shall apply:

i) The mortgagee shall have the same period after receipt of the notice of failure to perform to remedy the failure to perform, or cause the same to be remedied, as is given to Freeborn Wind, plus, in each instance, sixty (60) days, provided that such 60-day period shall be extended for the time reasonably required to complete such cure, including the time required for the mortgagee to perfect its right to cure failure to perform by obtaining possession (including possession by a receiver) or by instituting foreclosure proceedings, and provided the mortgagee acts with reasonable and continuous diligence. The mortgagee shall have the absolute right to substitute itself for Freeborn Wind and perform the duties of Freeborn Wind hereunder for purposes of curing such failure to perform. The County expressly consents to such substitution, agrees to accept such performance, and authorize the mortgagee (or its employees, agents, representatives or contractors) to enter upon the County roads to complete such performance with all the rights, privileges and obligations of the original Freeborn Wind hereunder.

(c) No Waiver. No payment made to the County by a mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and a mortgagee, having made any payment to the County pursuant to the County's wrongful, improper or mistaken notice or demand, shall be entitled to the return of any such payment.

[signature page to follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

BOARD OF SUPERVISORS

FREEBORN WIND ENERGY LLC

/

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

ATTEST:

By: _____
County Clerk

BOARD OF SUPERVISORS, AS TRUSTEES OF
DRAINAGE DISTRICTS IN WORTH COUNTY, IOWA

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

ATTEST:

By: _____
County Auditor

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, as _____ of Freeborn Wind Energy LLC, a Delaware limited liability company, on its behalf.

Notary Public for _____
My commission expires: _____

STATE OF IOWA)
)ss:
COUNTY OF WORTH)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, Supervisor.

Notary Public for _____
My commission expires: _____

STATE OF IOWA)
)ss:
COUNTY OF WORTH)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, Supervisor.

Notary Public for _____
My commission expires: _____

STATE OF IOWA)
)ss:
COUNTY OF WORTH)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, Supervisor.

Notary Public for _____

ROAD AND DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT, Page 11 of 12
Pages.

My commission expires: _____

STATE OF IOWA)
)ss:
COUNTY OF WORTH)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, Supervisor, as Trustee of the Drainage Districts in Worth County, Iowa.

Notary Public for _____
My commission expires: _____

STATE OF IOWA)
)ss:
COUNTY OF WORTH)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, Supervisor, as Trustee of the Drainage Districts in Worth County, Iowa.

Notary Public for _____
My commission expires: _____

STATE OF IOWA)
)ss:
COUNTY OF WORTH)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__ by _____, Supervisor, as Trustee of the Drainage Districts in Worth County, Iowa.

Notary Public for _____
My commission expires: _____

EXHIBIT A

EXHIBIT B
LEGAL DESCRIPTION

T100N, R20W, Sections 10-15, 23-26 and 35.

T100N, R19W, Sections 7-30, 34-36

Sue G. Miller

From: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Sent: Thursday, July 27, 2017 10:56 AM
To: Sue G. Miller; Kelly Callahan; Winston Beiser
Cc: Amanuel Haile (amanuel.t.haile@xcelenergy.com); Ruberg, Brittni J; Peterson, Chad T; Rosenfeld, Trisha A; Cox, Sarah
Subject: Freeborn Wind Farm 3-part agreement discussion
Attachments: L060_final turbines_FOR FILING.zip; L060_final_roads_rev02.zip; Freeborn.zip; Freeborn_RPA_Data_for_Review_20170720.zip; L058_collection.zip; L058_crane paths.zip

Dear Sue, Kelly and Winston,

Thank you so much for your time on Tuesday. I look forward to continued, productive discussions.

Attached are shape files per Sue's request.

I look forward to Sue's feedback from the townships and a potential next meeting in early September. I think we may have a state-run Public Information Meeting for the project mid-September, so maybe we could schedule our next meeting for that morning when we will all be in town anyway. I will let you know when a date is set. I think we can pencil in September 16, but that is far from final.

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC
@danlitch

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Exhibit F

Data Practices Act Request Responses

Requested November 30, 2018

Minnesota Department of Commerce

Received January 3, 2019

Subject: Noverber 30 Freeborn DPA Response
From: "Wachtler, John (COMM)" <john.wachtler@state.mn.us>
Date: 1/3/2019, 12:15 PM
To: "Carol A. Overland" <overland@legalectric.org>

Hello Carol.

Sorry for the delay getting back to on your Freeborn data practices act request of November 30, 2018. I have attached five emails between Andrew Levi (EERA staff) and Invenergy regarding eminent domain generally. But these are the only documents that we found that are responsive to your DPA request

We do not, however, have any notes, email or correspondence between Commerce staff and Freeborn County officials.

Mr. Hartman does remember talking to someone at the county, but does not have any notes and doesn't remember any details.

Please feel free to get back to me with any questions though.

John

John Wachtler
Energy Program Director
Minnesota Department of Commerce
85 7th Place East, Suite 500, Saint Paul, MN 55101
P: 651-539-1837
C: 651-724-1063

Logo

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From: Carol A. Overland <overland@legalectric.org>
Sent: Thursday, December 13, 2018 12:06 PM
To: Wachtler, John (COMM) <john.wachtler@state.mn.us>
Subject: Fwd: FW: Wind Farm Info.

Here's everything they sent.

References to Hartman are in Packet 2, p. 10, 13, and 19. Not much in writing, but a request to call, and a statement that he was called and that he "confirmed" who knows what. The discussion is both about public utility and the easement on the corner of the problematic route.

----- Forwarded Message -----

Subject:FW: Wind Farm Info.
Date:Wed, 21 Nov 2018 17:44:16 +0000
From:Tom Jensen <Tom.Jensen@co.freeborn.mn.us>
To:Carol A. Overland <overland@legalectric.org>
CC:Dorenne Hansen <dhansen078@gmail.com>

Thomas Jensen

To: "Levi, Andrew (COMM)" <andrew.levi@state.mn.us>

Still going strong in the small hearing room. I'll let you know when we wrap up.

Attached is what I'd like to discuss if you have the opportunity and inclination to preview it.

Dan Litchfield
773-318-1289

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Subject: Eminent Domain
From: "Levi, Andrew (COMM)" <andrew.levi@state.mn.us>
Date: 9/18/2017, 3:30 PM
To: "Litchfield, Daniel" <DLitchfield@inveneryllc.com>
CC: "Wachtler, John (COMM)" <john.wachtler@state.mn.us>

Dan—

Thank you for the opportunity to review a draft public notice. I've discussed the notice with my supervisor and others within Commerce.

We find that Minn. R. 7850.2100, Subp. 3(J) requires applicants to clearly state their eminent domain authority. The draft notice neither states nor implies Freeborn Wind Energy LLC's power of eminent domain to acquire land necessary for the project. As such, we question whether this notice constitutes a "bona fide attempt to comply" with the obligation to inform the public of the project.

We discussed several examples, including [Odell Transmission](#), [Prairie Rose](#), and [Bull Moose](#). The landowner letters in those dockets clearly state the extent of the applicant's authority.

This issue is unavoidable and will be discussed during scoping. It is a necessary component of alternative development provided in Minn. R. 7850.3700. EERA staff evaluates proposed alternatives based on several factors, one of which is feasibility. Easement acquisition certainly plays into that.

If you have further questions regarding this issue, I suggest you contact my supervisor, John Wachtler, at (651) 539-1837 or john.wachtler@state.mn.us.

—Andrew

Andrew Levi, Environmental Review Specialist
Energy Environmental Review and Analysis
85 Seventh Place East, Suite 280 | Saint Paul, MN 55101
P: (651) 539-1840 | F: (651) 539-0109



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— ForwardedMessage.eml —

Subject: call
From: "Levi, Andrew (COMM)" <andrew.levi@state.mn.us>
Date: 9/18/2017, 1:57 PM
To: "Litchfield, Daniel" <DLitchfield@inveneryllc.com>

I received your telephone message. I hope to send you an email later today regarding that section. In the meantime, attached here are several minor changes mostly related to contact information. Are you attaching Figure 1 as the overview map?

—Andrew

— ForwardedMessage.eml

Subject: RE: Route Alternatives
From: "Litchfield, Daniel" <DLitchfield@invenergyllc.com>
Date: 1/17/2018, 10:37 AM
To: "Levi, Andrew (COMM)" <andrew.levi@state.mn.us>

Good morning Andrew,

Below are responses to your questions in red. Please let me know if you require any additional clarification or information. As noted below, I will follow up shortly with your requested shape file.

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC @danlitch

From: Levi, Andrew (COMM) [mailto:andrew.levi@state.mn.us]
Sent: Tuesday, January 16, 2018 11:48 AM
To: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Subject: RE: Route Alternatives

Dan.

Thank you for this.

Please be sure to provide me any additional response you might have regarding Freeborn Wind Energy's review of route or route segment alternatives. For example, AFCL proposes the use of the Barton Switching Station or the Hayward Substation on pages 7 and 8 of their comments. The project's initial interconnection plan had been to connect to Hayward, but we moved the interconnection point to Glenworth, in part to avoid additional wildlife activity near Hayward substation and Albert Lea Lake. MISO was ok with this move because the electrical performance of the Hayward and Glenworth interconnections are similar. The ITC Midwest 161 kV line is from the Worth County substation to Glenworth, then up to Hayward. So there were no significant technical issues presented by this move. Now we have a completed, signed GIA for the Project to connect at Glenworth. Changes to that plan cannot be made at this time.

The Barton substation has a very different electrical performance, and a switch to that substation would not be possible. Also, the Barton substation is in the center of a competitor's wind project, and securing easements necessary to access that substation, at the center of the wind farm, would be impractical at best. Finally, from a timing standpoint, we have executed a Generator Interconnection Agreement with MISO and ITC for our connection to Glenworth and, even if those other substation locations were viable alternative interconnection points (which they are not), a switch at this time would irreparably harm the Project from a cost and schedule standpoint. We would have to terminate a viable GIA to Glenworth (with very low interconnection costs) and start the process anew into Barton. This process would likely require 2 or more years to conclude and cannot be commenced until March 2018. The conclusions could be very negative, for example, that an interconnection into Barton requires substantial network upgrades that make the project economically not viable. Indeed, the mature interconnection position into Glenworth is a major reason why the project was selected by Xcel Energy for its self-build program. Freeborn's excellent access to electrical markets via the Glenworth substation is a prime piece of evidence that it is an ideal site for a wind energy generating facility. For these reasons, Freeborn Wind strongly opposes consideration of any route with a differing end point.

Additionally, I have several follow-up questions. Please don't search for the answers; if you don't know or the answer is "no" that's okay.

How wide is the right-of-way for the ITC Midwest LLC 69 kV line? Would the right-of-way need to be widened to accommodate underbuilding the proposed line? Did you contact ITC Midwest? If so, what did they say about underbuilding or right-of-way sharing? Attached is an example easement that appears to underlie the ITC Midwest LLC 69 kV line. It does not specify a ROW width, but it does specify that it can clear trees to 50' on either side of the land. Yes, we have been in contact with ITC Midwest and they are willing to consider a colocation.

Please provide answers to the above questions for the Dairyland Cooperative Line. You mentioned it would require taller poles and cost more money: Can you tell me anything about how tall the poles would need to be? And how much more expensive? Our very rough estimate is 20-30 feet taller and probably 50% more expensive.

Could you please provide a shapefile of the proposed 1.1x tip height setback from proposed turbines 22 and 23. Yes. Our project engineer is traveling today so I cannot get that for you right away. Will send it as soon as I can. Rich Davis will have shapefiles of all our proposed facilities, including turbine locations. When I can get ahold of our engineer, I will ask him to create a new shapefile that shows the proposed alternate route, presumably with a transmission line alignment centered on the route width, and then a 110% turbine height setback on either side of that.

Thank you.

—Andrew

Andrew Levi, Environmental Review Specialist
Energy Environmental Review and Analysis
85 Seventh Place East, Suite 280 | Saint Paul, MN 55101
P: (651) 539-1840 | F: (651) 539-0109



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From: Litchfield, Daniel [<mailto:DLitchfield@invenergyllc.com>]
Sent: Friday, January 12, 2018 10:45 AM
To: Levi, Andrew (COMM) <andrew.levi@state.mn.us>
Subject: RE: Route Alternatives

Dear Andrew,

Attached are:

1. Memo discussing the alternate routes
2. Modified route width for proposal #2
3. Participating land shapefiles for the entire area

Please contact me at your convenience if you would like to discuss our response

Dan Litchfield | Senior Manager, Project Development
Invenergy | One South Wacker Drive, Suite 1800, Chicago, IL 60606
dlitchfield@invenergyllc.com | M 312-224-1400 | D 312-582-1057 | C 773-318-1289 | @InvenergyLLC @danlitch

From: Levi, Andrew (COMM) [<mailto:andrew.levi@state.mn.us>]
Sent: Monday, January 08, 2018 3:03 PM
To: Litchfield, Daniel <DLitchfield@invenergyllc.com>
Cc: Levi, Andrew (COMM) <andrew.levi@state.mn.us>
Subject: Route Alternatives

Dan—

Please review and provide a response at your earliest convenience. Let me know you received this. Note: The response will be attached to Commerce comments to the Commission.

—Andrew

* * *

DATE: January 9, 2018
TO: Dan Litchfield, Project Manager
Freeborn Wind Energy LCC
FROM: Andrew Levi, Environmental Review Manager
Minnesota Department of Commerce
RE: Route alternatives identified during scoping

Minnesota Rule 7850.3700, subpart 2, requires that Commerce provide applicants with an opportunity to respond to each request that an alternative be included in the environmental assessment. The following route and route segment alternatives were proposed. Shapefiles are attached. (I may forward additional alternatives based on my continued review of comments.)

Route Alternative 1

The Association of Freeborn Wind Landowners (AFCL) proposed this alternative route to limit land used by the proposed project to only participating landowners. AFCL provided a map as part of their written comments (**Pages from eDockets - AFCL**). When transferring this map to ArcGIS software,

staff maintained a 400-foot route width, and ensured the route width was entirely on participating landowner's property (**Map 1**).

Route Alternative 2

Staff proposes this alternative. It addresses those issues identified in Route Alternative 1. Staff's alternative differs from Route Alternative 1 inasmuch that staff only modified the proposed route where it overlapped onto non-participating landowner's property—staff did not modify the proposed centerline. (**Map 2**)

Route Segment Alternative 1

Ms. Stephanie Richter proposed this alternative route segment to mitigate transmission line proliferation in the project area. She requests the proposed project be routed parallel to existing transmission lines. Staff defines paralleling as immediately adjacent to the existing line (either with or without right-of-way sharing). Ms. Richter provided a map at the public hearing (**Stephanie Richter Document**).

Staff developed Route Segment Alternative 1 (**Map 3**) based on Ms. Richter's comments. This route segment alternative begins west of 820th Avenue at approximately mile three of the proposed line from south to north. The segment alternative continues west from the proposed route. It then travels north along the existing 69 kV line. At 140th Street it turns west until it rejoins the proposed route just south of the Glenworth Substation.

Staff modified the 400-foot route width to 600 feet near the communications tower to allow for the line to pass to the west of the tower. Staff requests that both paralleling and underbuilding be analyzed along the entire route segment.

Andrew Levi, Environmental Review Specialist
Energy Environmental Review and Analysis
85 Seventh Place East, Suite 280 | Saint Paul, MN 55101
P: (651) 539-1840 | F: (651) 539-0109



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Subject: response to inquiry #3
From: "Litchfield, Daniel" <DLitchfield@inenergyllc.com>
Date: 5/4/2018, 5:05 PM
To: "Levi, Andrew (COMM)" <andrew.levi@state.mn.us>

Andrew,

Here you go. Have a great weekend.

Dan Litchfield | Director, Renewable Development
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HEI - Freeborn Wind Transmission Line Noise Response to MN Inquiry 20180502.pdf	116 KB
Information Inquiry 3 response.pdf	129 KB
FBW-A-T009-5-THI-161S-JX.pdf	146 KB

Exhibit G

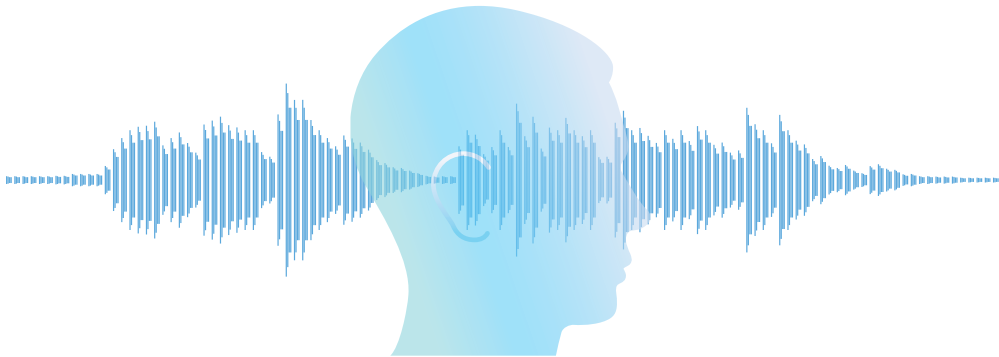
World Health Organization Environmental Noise Guidelines

Selected -- pages 77-86.

Released October 10, 2018



ENVIRONMENTAL **NOISE** GUIDELINES for the European Region





3.4 Wind turbine noise

Recommendations

For average noise exposure, the GDG **conditionally** recommends reducing noise levels produced by wind turbines below **45 dB L_{den}** , as wind turbine noise above this level is associated with adverse health effects.

To reduce health effects, the GDG **conditionally** recommends that policy-makers implement suitable measures to reduce noise exposure from wind turbines in the population exposed to levels above the guideline values for average noise exposure. No evidence is available, however, to facilitate the recommendation of one particular type of intervention over another.



3.4.1 Rationale for the guideline levels for wind turbine noise

The exposure levels were derived in accordance with the prioritizing process of critical health outcomes described in section 2.4.3. For each of the outcomes, the exposure level was identified by applying the benchmark, set as relevant risk increase to the corresponding ERF. In the case of exposure to wind turbine noise, the process can be summarized as follows (Table 36).

Table 36. Average exposure levels (L_{den}) for priority health outcomes from wind turbine noise

Summary of priority health outcome evidence	Benchmark level	Evidence quality
Incidence of IHD Incidence of IHD could not be used to assess the exposure level.	5% increase of RR	No studies were available
Incidence of hypertension Incidence of hypertension could not be used to assess the exposure level.	10% increase of RR	No studies were available
Prevalence of highly annoyed population Four studies were available. An exposure–response curve of the four studies revealed an absolute risk of 10%HA (outdoors) at a noise exposure level of 45 dB L_{den} .	10% absolute risk	Low quality
Permanent hearing impairment	No increase	No studies were available
Reading skills and oral comprehension in children	One-month delay	No studies were available

In accordance with the prioritization process, the GDG set a guideline exposure level of 45.0 dB L_{den} for average exposure, based on the relevant increase of the absolute %HA. The GDG stressed that there might be an increased risk for annoyance below this noise exposure level, but it could not state whether there was an increased risk for the other health outcomes below this level owing to a lack of evidence. As the evidence on the adverse effects of wind turbine noise was rated low quality, the GDG made the recommendation conditional.

Next, the GDG considered the evidence for night noise exposure to wind turbine noise and its effect on sleep disturbance (Table 37).

Table 37. Night-time exposure levels (L_{night}) for priority health outcomes from wind turbine noise

Summary of priority health outcome evidence	Benchmark level	Evidence quality
Sleep disturbance Six studies were available; they did not reveal consistent results about effects of wind turbine noise on sleep.	3% absolute risk	Low quality

Based on the low quantity and heterogeneous nature of the evidence, the GDG was not able to formulate a recommendation addressing sleep disturbance due to wind turbine noise at night time.

The GDG also looked for evidence about the effectiveness of interventions for wind turbine noise exposure. Owing to a lack of research, however, no studies were available on existing interventions and associated costs to reduce wind turbine noise.

Based on this assessment, the GDG therefore provided a conditional recommendation for average noise exposure (L_{den}) to wind turbines and a conditional recommendation for the implementation of suitable measures to reduce noise exposure. No recommendation about a preferred type of intervention could be formulated; nor could a recommendation be made for an exposure level for night noise exposure (L_{night}), as studies were not consistent and in general did not provide evidence for an effect on sleep.

3.4.1.1 Other factors influencing the strength of recommendation

Other factors considered in the context of recommendations on wind turbine noise included those related to values and preferences, benefits and harms, resource implications, equity, acceptability and feasibility. Ultimately, the assessment of all these factors did not lead to a change in the strength of recommendation, although it informed the development of a conditional recommendation on the intervention measures. Further details are provided in section 3.4.2.3.

3.4.2 Detailed overview of the evidence

The following sections provide a detailed overview of the evidence constituting the basis for setting the recommendations on wind turbine noise. It is presented and summarized separately for each of the critical health outcomes, and the GDG's judgement of the quality of evidence is indicated (for a detailed overview of the evidence on important health outcomes, see Annex 4). Research into health outcomes and effectiveness of intervention is addressed consecutively.

A comprehensive summary of all evidence considered for each of the critical and important health outcomes can be found in the eight systematic reviews published in the *International Journal of Environmental Research and Public Health* (see section 2.3.2 and Annex 2).

It should be noted that, due to the time stamp of the systematic reviews, some more recent studies were not included in the analysis. This relates in particular to several findings of the Wind Turbine Noise and Health Study conducted by Health Canada (Michaud, 2015). Further, some studies were omitted, as they did not meet the inclusion criteria, including, for instance, studies using distance to the wind turbine instead of noise exposure to investigate health effects. The justification for including and excluding studies is given in the systematic reviews (Basner & McGuire, 2018; Brown et al.,

2017; Clark & Paunovic, 2018; in press; Guski et al., 2017; Niewenhuijsen et al., 2017; Śliwińska-Kowalska & Zaborowski, 2017; van Kempen et al., 2018; see Annex 2 for further details).

3.4.2.1 Evidence on health outcomes

The key question posed was: in the general population exposed to wind turbine noise, what is the exposure–response relationship between exposure to wind turbine noise (reported as various noise indicators) and the proportion of people with a validated measure of health outcome, when adjusted for main confounders? A summary of the PICOS/PECCOS scheme applied and the main findings is set out in Tables 38 and 39.

Table 38. PICOS/PECCOS scheme of critical health outcomes for exposure to wind turbine noise

PECO	Description
Population	General population
Exposure	Exposure to high levels of noise produced by wind turbines (average/night time)
Comparison	Exposure to lower levels of noise produced by wind turbines (average/night time)
Outcome(s)	For average noise exposure: 1. cardiovascular disease 2. annoyance 3. cognitive impairment 4. hearing impairment and tinnitus 5. adverse birth outcomes 6. quality of life, well-being and mental health 7. metabolic outcomes
	For night noise exposure: 1. effects on sleep



Table 39. Summary of findings for health effects from exposure to wind turbine noise (L_{den})

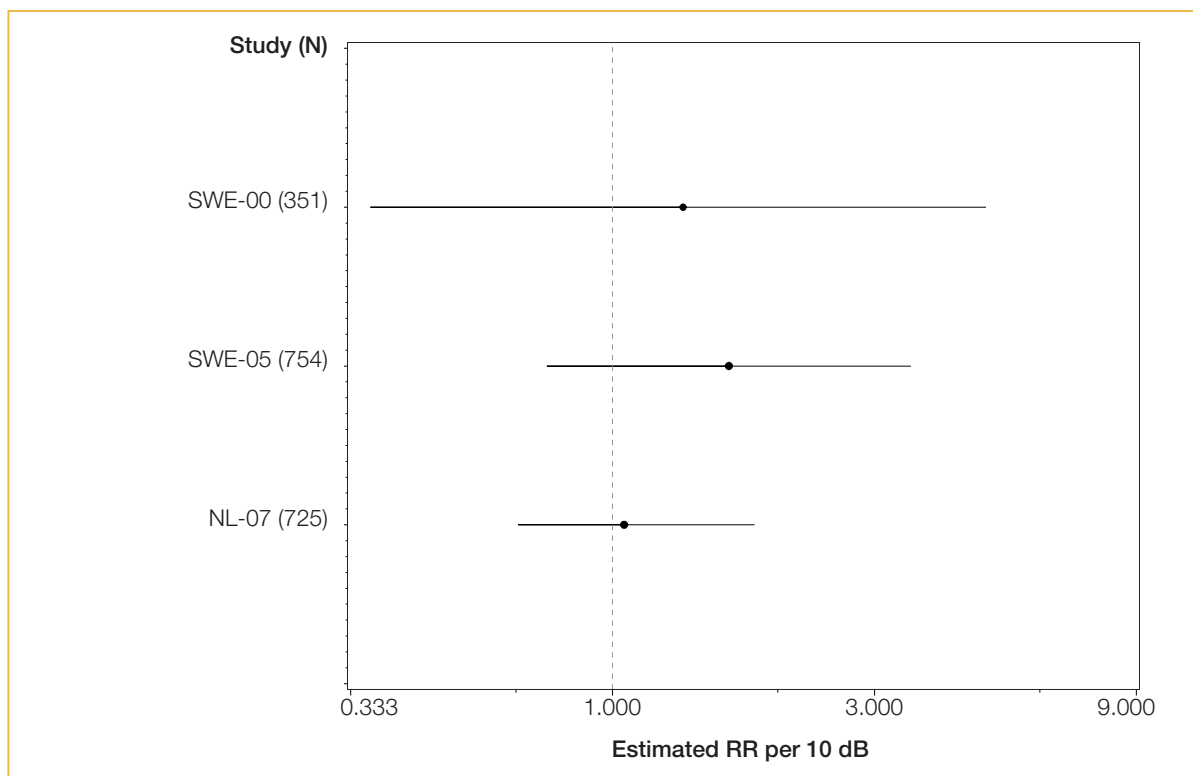
Noise metric	Priority health outcome measure	Quantitative risk for adverse health	Lowest level of exposure across studies	Number of participants (studies)	Quality of evidence
Cardiovascular disease					
L_{den}	Incidence of IHD	–	–	–	–
L_{den}	Incidence of hypertension	–	–	–	–
Annoyance					
L_{den}	%HA	Not able to pool because of heterogeneity	30 dB	2481 (4)	Low (downgraded for inconsistency and imprecision)
Cognitive impairment					
L_{den}	Reading and oral comprehension	–	–	–	–
Hearing impairment and tinnitus					
L_{den}	Permanent hearing impairment	–	–	–	–

Cardiovascular disease

For the relationship between wind turbine noise and prevalence of hypertension, three cross-sectional studies were identified, with a total of 1830 participants (van den Berg et al., 2008; Pedersen, 2011; Pedersen & Larsman, 2008; Pedersen & Persson Waye, 2004; 2007). The number of cases was not reported. All studies found a positive association between exposure to wind turbine noise and the prevalence of hypertension, but none was statistically significant. The lowest levels in studies were either <30 or <32.5 L_{den} . No meta-analysis was performed, since too many parameters were unknown and/or unclear. Due to very serious risk of bias and imprecision in the results, this evidence was rated very low quality (see Fig. 14).

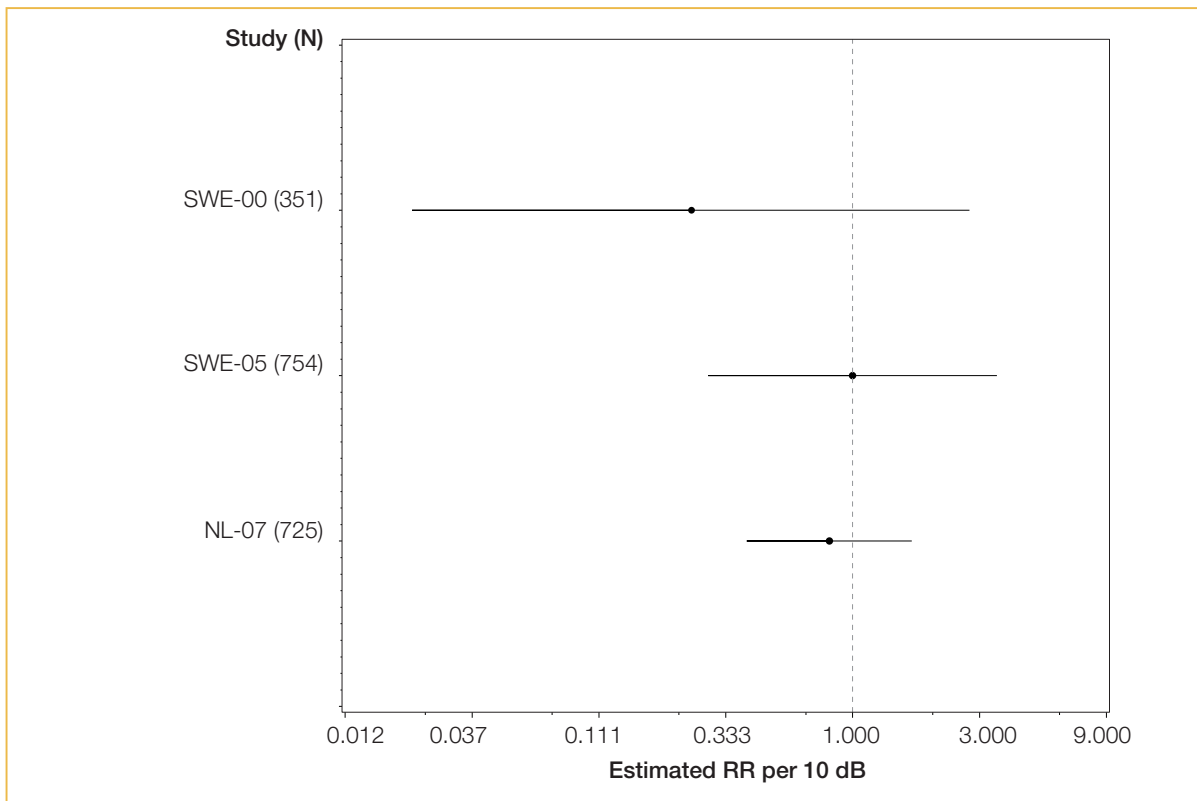
The same studies also looked at exposure to wind turbine noise and self-reported cardiovascular disease, but none found an association. No evidence was available for other measures of cardiovascular disease. As a result, only evidence rated very low quality was available for no considerable effect of audible noise (greater than 20 Hz) from wind turbines or wind farms on self-reported cardiovascular disease (see Fig. 15).

Fig. 14. The association between exposure to wind turbine noise (sound pressure level in dB) and hypertension



Notes: The dotted vertical line corresponds to no effect of exposure to wind turbine noise. The black dots correspond to the estimated RR per 10 dB and 95% CI. For further details on the studies included in the figure please refer to the systematic review on environmental noise and cardiovascular and metabolic effects (van Kempen et al., 2018).

Fig. 15. The association between exposure to wind turbine noise (sound pressure level) and self-reported cardiovascular disease



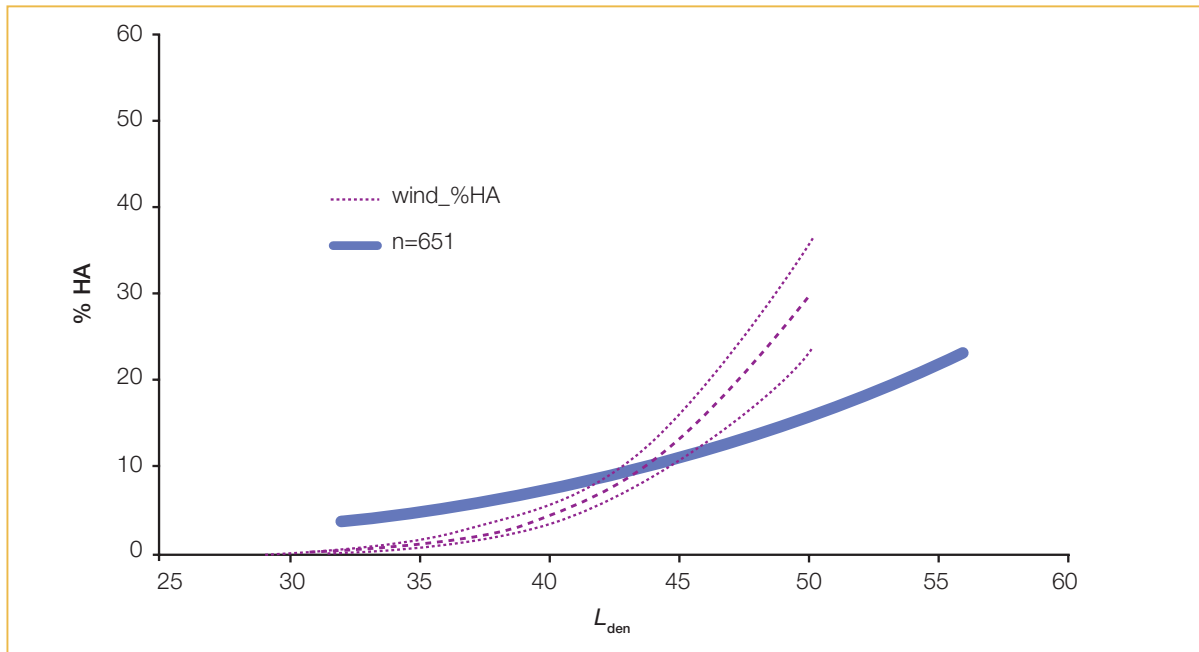
Notes: The dotted vertical line corresponds to no effect of exposure to wind turbine noise. The black circles correspond to the estimated RR per 10 dB (sound pressure level) and 95% CI. For further details on the studies included in the figure please refer to the systematic review on environmental noise and cardiovascular and metabolic effects (van Kempen et al., 2018).

Annoyance

Two publications containing descriptions of four individual studies were retrieved (Janssen et al., 2011; Kuwano et al., 2014). All four studies used measurements in the vicinity of the respondents' addresses; the noise exposure metrics used in the three original studies (Pedersen, 2011; Pedersen & Persson Waye, 2004; 2007) included in Janssen et al. (2011) were recalculated into L_{den} . The noise levels in the studies ranged from 29 dB to 56 dB. Different scales were used to assess annoyance, with slightly different definitions of "highly annoyed" and explicit reference to outdoor annoyance in the data used for the Janssen et al. (2011) curve. Construction of the ERFs provided in the two publications differed and they were therefore not further combined in a meta-analysis. Fig. 16 shows the %HA from the two publications. The 10% criterion for %HA is reached at around 45 dB L_{den} (where the two curves coincide). There was a wide variability in %HA between studies, with a range of 3–13%HA at 42.5 dB and 0–32%HA at 47.5 dB. The %HA in the sample is comparatively high, given the relatively low noise levels. There is evidence rated low quality for an association between wind turbine noise and annoyance, but this mainly applies to the association between wind turbine noise and annoyance and not to the shape of the quantitative relationship.

Further statistical analyses of annoyance yield evidence rated low quality for an association between wind turbine noise and %HA when comparing an exposure at 42.5 dB and 47.5 dB, with a mean difference in %HA of 4.5 (indoors) and 6.4 (outdoors). There is also evidence rated moderate quality for a correlation between individual noise exposure and annoyance raw scores ($r = 0.28$).

Fig. 16. Overlay of the two wind turbine annoyance graphs



Notes: Overlay of the two wind turbine outdoor annoyance graphs adapted from Janssen et al. (2011, red) and Kuwano et al. (2014, blue). The Kuwano et al. curve is based on L_{dn} ; no correction for L_{den} has been applied.¹⁸ For further details on the studies included in the figure please refer to the systematic review on environmental noise and annoyance (Guski et al., 2017).

Cognitive impairment, hearing impairment and tinnitus, adverse birth outcomes

No studies were found, and therefore no evidence was available on the relationship between wind turbine noise and measures of cognitive impairment; hearing impairment and tinnitus; and adverse birth outcomes.

Sleep disturbance

Six cross-sectional studies on wind turbine noise and self-reported sleep disturbance were identified (Bakker et al., 2012; Kuwano et al., 2014; Michaud, 2015; Pawlaczyk-Luszczynska et al., 2014; Pedersen & Persson Waye, 2004; 2007). Noise levels were calculated using different methods, and different noise metrics were reported. Three of the studies asked how noise affects sleep; the other three evaluated the effect of wind turbine noise on sleep using questions that explicitly referred to noise (Table 40).

¹⁸ L_{dn} is the day-night-weighted sound pressure level as defined in section 3.6.4 of ISO 1996-1:2016.

Table 40. Summary of findings for health effects from exposure to wind turbine noise (L_{night})

Noise metric	Priority health outcome measure	Quantitative risk for adverse health	Lowest level of effects in studies	Number of participants (studies)	Quality of evidence
Effects on sleep					
L_{night}	%HSD	1.60 (95% CI: 0.86–2.94) per 10 dB increase	31 dB	3971 (6)	Low (downgraded for study limitations, inconsistency, precision)

The risk of bias was assessed as high for all six studies, as effects on sleep were measured by self-reported data. There were a limited number of subjects at higher exposure levels. A meta-analysis was conducted for five of the six studies, based on the OR for high sleep disturbance for a 10 dB increase in outdoor predicted sound pressure level. The pooled OR was 1.60 (95% CI: 0.86–2.94). The evidence was rated low quality.

3.4.2.2 Evidence on interventions

This section summarizes the evidence underlying the recommendation on the effectiveness of interventions for wind turbine noise exposure. The key question posed was: in the general population exposed to wind turbine noise, are interventions effective in reducing exposure to and/or health outcomes from wind turbine noise? A summary of the PICOS/PECCOS scheme applied is set out in Table 41.

Table 41. PICOS/PECCOS scheme of the effectiveness of interventions for exposure to wind turbine noise

PICO	Description
Population	General population
Intervention(s)	The interventions can be defined as: (a) a measure that aims to change noise exposure and associated health effects; (b) a measure that aims to change noise exposure, with no particular evaluation of the impact on health; or (c) a measure designed to reduce health effects, but that may not include a reduction in noise exposure.
Comparison	No intervention
Outcome(s)	For average noise exposure: 1. cardiovascular disease 2. annoyance 3. cognitive impairment 4. hearing impairment and tinnitus 5. adverse birth outcomes 6. quality of life, well-being and mental health 7. metabolic outcomes
	For night noise exposure: 1. effects on sleep



No studies were found, and therefore no evidence was available on the effectiveness of interventions to reduce noise exposure from wind turbines.

3.4.2.3 Consideration of additional contextual factors

As the foregoing overview has shown, very little evidence is available about the adverse health effects of continuous exposure to wind turbine noise. Based on the quality of evidence available, the GDG set the strength of the recommendation on wind turbine noise to conditional. As a second step, it qualitatively assessed contextual factors to explore whether other considerations could have a relevant impact on the recommendation strength. These considerations mainly concerned the balance of harms and benefits, values and preferences, and resource use and implementation.

Regarding the balance of harms and benefits, the GDG would expect a general health benefit from a marked reduction in any kind of long-term environmental noise exposure. Health effects of individuals living in the vicinity of wind turbines can theoretically be related not only to long-term noise exposure from the wind turbines but also to disruption caused during the construction phase. The GDG pointed out, however, that evidence on health effects from wind turbine noise (apart from annoyance) is either absent or rated low/very low quality (McCunney et al., 2014). Moreover, effects related to attitudes towards wind turbines are hard to discern from those related to noise and may be partly responsible for the associations (Knopper & Ollson, 2011). Furthermore, the number of people exposed is far lower than for many other sources of noise (such as road traffic). Therefore, the GDG estimated the burden on health from exposure to wind turbine noise at the population level to be low, concluding that any benefit from specifically reducing population exposure to wind turbine noise in all situations remains unclear. Nevertheless, proper public involvement, communication and consultation of affected citizens living in the vicinity of wind turbines during the planning stage of future installations is expected to be beneficial as part of health and environmental impact assessments. In relation to possible harms associated with the implementation of the recommendation, the GDG underlined the importance of wind energy for the development of renewable energy policies.

The GDG noticed that the values and preferences of the population towards reducing long-term noise exposure to wind turbine noise vary. Whereas the general population tends to value wind energy as an alternative, environmentally sustainable and low-carbon energy source, people living in the vicinity of wind turbines may evaluate them negatively. Wind turbines are not a recent phenomenon, but their quantity, size and type have increased significantly over recent years. As they are often built in the middle of otherwise quiet and natural areas, they can adversely affect the integrity of a site. Furthermore, residents living in these areas may have greater expectations of the quietness of their surroundings and therefore be more aware of noise disturbance. Negative attitudes especially occur in individuals who can see wind turbines from their houses but do not gain economically from the installations (Kuwano et al., 2014; Pedersen & Persson Waye, 2007; van den Berg et al., 2008). These situational variables and the values and preferences of the population may differ between wind turbines and other noise sources, as well as between wind turbine installations, which makes assessment of the relationship between wind turbine noise exposure and health outcomes particularly challenging.

Assessing resource use and implementation considerations, the GDG noted that reduction of noise exposure from environmental sources is generally possible through simple measures like insulating windows or building barriers. With wind turbines, however, noise reduction interventions are more

complicated than for other noise sources due to the height of the source and because outdoor disturbance is a particularly large factor. As generally fewer people are affected (compared to transportation noise), the expected costs are lower than for other environmental sources of noise. The GDG was not aware of any existing interventions (and associated costs) to reduce harms from wind turbine noise, or specific consequences of having regulations on wind turbine noise. Therefore, it could not assess feasibility, or discern whether any beneficial effects of noise reduction would outweigh the costs of intervention. In particular, there is no clear evidence on an acceptable and uniform distance between wind turbines and residential areas, as the sound propagation depends on many aspects of the wind turbine construction and installation.

In light of the assessment of the contextual factors in addition to the quality of evidence, the recommendation for wind turbine noise exposure remains conditional.

Additional considerations or uncertainties

Assessment of population exposure to noise from a particular source is essential for setting health-based guideline values. Wind turbine noise is characterized by a variety of potential moderators, which can be challenging to assess and have not necessarily been addressed in detail in health studies. As a result, there are serious issues with noise exposure assessment related to wind turbines.

Noise levels from outdoor sources are generally lower indoors because of noise attenuation from the building structure, closing of windows and similar. Nevertheless, noise exposure is generally estimated outside, at the most exposed façade. As levels of wind turbine noise are generally much lower than those of transportation noise, the audibility of wind turbines in bedrooms, particularly when windows are closed, is unknown.

In many instances, the distance from a wind farm has been used as a proxy to determine audible noise exposure. However, in addition to the distance, other variables – such as type, size and number of wind turbines, wind direction and speed, location of the residence up- or downwind from wind farms and so on – can contribute to the resulting noise level assessed at a residence. Thus, using distance to a wind farm as a proxy for noise from wind turbines in health studies is associated with high uncertainty.

Wind turbines can generate infrasound or lower frequencies of sound than traffic sources. However, few studies relating exposure to such noise from wind turbines to health effects are available. It is also unknown whether lower frequencies of sound generated outdoors are audible indoors, particularly when windows are closed.

The noise emitted from wind turbines has other characteristics, including the repetitive nature of the sound of the rotating blades and atmospheric influence leading to a variability of amplitude modulation, which can be a source of above average annoyance (Schäffer et al., 2016). This differentiates it from noise from other sources and has not always been properly characterized. Standard methods of measuring sound, most commonly including A-weighting, may not capture the low-frequency sound and amplitude modulation characteristic of wind turbine noise (Council of Canadian Academies, 2015).

Even though correlations between noise indicators tend to be high (especially between L_{Aeq} -like indicators) and conversions between indicators do not normally influence the correlations between the noise indicator and a particular health effect, important assumptions remain when exposure to



wind turbine noise in L_{den} is converted from original sound pressure level values. The conversion requires, as variable, the statistical distribution of annual wind speed at a particular height, which depends on the type of wind turbine and meteorological conditions at a particular geographical location. Such input variables may not be directly applicable for use in other sites. They are sometimes used without specific validation for a particular area, however, because of practical limitations or lack of data and resources. This can lead to increased uncertainty in the assessment of the relationship between wind turbine noise exposure and health outcomes.

Based on all these factors, it may be concluded that the acoustical description of wind turbine noise by means of L_{den} or L_{night} may be a poor characterization of wind turbine noise and may limit the ability to observe associations between wind turbine noise and health outcomes.

3.4.3 Summary of the assessment of the strength of recommendations

Table 42 provides a comprehensive summary of the different dimensions for the assessment of the strength of the wind turbine recommendations.

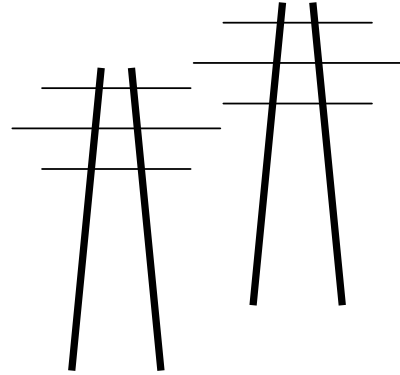
Table 42. Summary of the assessment of the strength of the recommendation

Factors influencing the strength of recommendation	Decision
Quality of evidence	<p>Average exposure (L_{den}) <i>Health effects</i></p> <ul style="list-style-type: none"> Evidence for a relevant absolute risk of annoyance at 45 dB L_{den} was rated low quality. <p><i>Interventions</i></p> <ul style="list-style-type: none"> No evidence was available on the effectiveness of interventions to reduce noise exposure and/or health outcomes from wind turbines. <p>Night-time exposure (L_{night}) <i>Health effects</i></p> <ul style="list-style-type: none"> No statistically significant evidence was available for sleep disturbance related to exposure from wind turbine noise at night. <p><i>Interventions</i></p> <ul style="list-style-type: none"> No evidence was available on the effectiveness of interventions to reduce noise exposure and/or sleep disturbance from wind turbines.
Balance of benefits versus harms and burdens	Further work is required to assess fully the benefits and harms of exposure to environmental noise from wind turbines and to clarify whether the potential benefits associated with reducing exposure to environmental noise for individuals living in the vicinity of wind turbines outweigh the impact on the development of renewable energy policies in the WHO European Region.
Values and preferences	There is wide variability in the values and preferences of the population, with particularly strong negative attitudes in populations living in the vicinity of wind turbines.
Resource implications	Information on existing interventions (and associated costs) to reduce harms from wind turbine noise is not available.
Additional considerations or uncertainties	There are serious issues with noise exposure assessment related to wind turbines.
Decisions on recommendation strength	<ul style="list-style-type: none"> Conditional for guideline value for average noise exposure (L_{den}) Conditional for the effectiveness of interventions (L_{night})

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September 20, 2017

LauraSue Schlatter
Administrative Law Judge
OAH
P.O. Box 64620
St. Paul, MN 55164-0620

via eFiling and eService

RE: Motion & Petition for Task Force - Association of Freeborn County Landowners
OAH Docket: 80-2500-34633
MPCU Docket: IP-6946/WS-17-410

Dear Judge Schlatter:

On behalf of Association of Freeborn County Landowners, enclosed please find Motion of Association of Freeborn County Landowners for Certification to Public Utilities Commission of Its Petition, and Petition to the Commission for Appointment of an Advisory Task Force and a Science Advisory Task Force.

Please let me know if you have any questions or require anything further.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law

Enclosure

cc: Christina Bruesven, Fredricksen & Byron, for Freeborn Wind – via eFiling
Association of Freeborn County Landowners
Hard copy to ALJ Schlatter to follow

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
for the
MINNESOTA PUBLIC UTILITIES COMMISSION**

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

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

**MOTION OF ASSOCIATION OF FREEBORN COUNTY LANDOWNERS FOR
CERTIFICATION TO PUBLIC UTILITIES COMMISSION OF ITS PETITION,
AND PETITION TO THE COMMISSION, FOR APPOINTMENT OF AN
ADVISORY TASK FORCE AND A SCIENCE ADVISORY TASK FORCE**

The Association of Freeborn County Landowners (hereinafter “AFCL”) is an intervenor in the Freeborn Wind docket, above-captioned. The Association of Freeborn County Landowners hereby requests that an Advisory Task Force and a Science Advisory Task Force be appointed, as provided by Minn. Stat. §216E.08, Subd. 1 and Subd. 4, and the Commission alone has statutory authority to appoint task forces. Minn. Stat. §216E.08, Subd. 1 and Subd. 4.

The public participation section of the Power Plant Siting Act, Minn. Stat. §216E.08, is expressly not exempted and is applicable to wind siting projects under Minn. Stat. §216F:

216F.02 EXEMPTIONS.

(a) The requirements of chapter 216E do not apply to the siting of LWECs, except for sections 216E.01; 216E.03, subdivision 7; 216E.08; 216E.11; 216E.12; 216E.14; 216E.15; 216E.17; and 216E.18, subdivision 3, which do apply.

Minn. Stat. 216F.02(a) (emphasis added).

The “Public Participation” statute is clear that public participation is fundamental:

Subd. 2. Other public participation.

The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section 216E.16.

Minn. Stat. §216E.08, Subd. 2 (emphasis added).

Toward that objective, the Association of Freeborn County Landowners requests that this request for appointment of an Advisory Task Force and a Scientific Advisory Task Force be certified to the Commission for consideration. Minn. R. 1405.2200.

I. MOTION FOR CERTIFICATION TO COMMISSION, WHICH HAS SOLE AUTHORITY TO DETERMINE WHETHER TO APPOINT TASK FORCES UNDER MINN. STAT. §216E.08, Subd. 1 and Subd. 4.

Under Minn. Stat. §216E.08, Subd. 1 and Subd. 4, the Public Utilities Commission has sole authority to establish task forces. The statute authorizing task forces, Minn. Stat. §216E.08, Public Participation, is, as above, expressly included in Power Plant Siting Act statutes applicable to wind project siting, and is expressly not exempted. Minn. Stat. §216F.08.

This Motion is brought under Minn. R. 1405.2200, which directs Motions to be made to the Administrative Law Judge for certification to the Commission. The Commission alone is granted authority to appoint an Advisory Task Force and a Scientific Advisory Task Force, hence this request for certification. Both task forces are needed in this docket to address the multiple matters of material fact in this proceeding, about which there is insufficient information available.

AFCL does not request a hearing on this matter, but if one is contemplated, request that it be held at earliest convenience so as not to delay the agreed-upon schedule for this proceeding. Minn. R. 1405.2200; see also Minn. R. 1400.6600; 7829.0410.

I. THE COMMISSION SHOULD APPOINT AN ADVISORY TASK FORCE

An Advisory Task Force is a fundamental public participation option for the public to address issues before the Commission in its evaluation of sites:

216E.08 PUBLIC PARTICIPATION

Subdivision 1. Advisory task force.

The commission may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section [15.059, subdivision 6](#). At the time the task force is appointed, the commission shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the commission in the charge, whichever occurs first.

Minn. Stat. §216E.08, Subd. 1.

Public participation is particularly important in this proceeding for due process and fundamental fairness, as there has been no direct notice required or provided to landowners until the beginning of September, when notices were mailed out to landowner in the project footprint. There was no Certificate of Need, which requires a Notice Plan and extensive notice prior to the filing of application. There was no notice provided to landowners of Xcel Energy's resource acquisition docket approving this project for Xcel.¹ Once that acquisition was approved, without public notice and opportunity for input, it becomes not a matter of "if" but "where," which puts landowners at a significant disadvantage. There has been no public participation opportunity in this permitting process for affected landowners and members of the public until this point,

¹ PUC Docket E-002/M-16-777.

months after the application was filed in June. This project, approved as it was as a “resource acquisition,” has circumvented public notice and participation, and has stripped local landowners, residents, and members of the public of due process in determination of need for the project. Every opportunity for public participation should be utilized going forward, in line with the Commission’s commitment to “broad spectrum citizen participation as a principal of operation.” Minn. Stat. §216F.08, Subd. 2.

As a means of public participation, the statute proposes Advisory Task Force, and suggests local units of government as a floor for representation, not a ceiling, noting that the task force “shall be comprised of as many persons as may be designated by the commission.” Landowners and the public should be provided with opportunity to participate. Task forces have through history provided much needed “on the ground” information and contributed to understanding of and participation in the arcane siting process.

The charge of the Advisory Task Force is to be determined by the Commission and should be narrow and specific to this docket and issues raised. The Association of Freeborn County Landowners requests that the charge to the Advisory Task Force include material issues raised including wildlife habitat and foraging range, designated wetlands on private property, wind turbine sound, potential for shadow flicker and adequacy of setbacks in the interests of health, environment, and public safety. There would be no delay because task forces as scheduled by Commerce – EERA typically only meet three times, and often over a compress time frame of three weeks or less. The schedule as agreed upon by the parties does not anticipate public and evidentiary hearings until the end of January into early February. Appointment of an Advisory Task Force would not prejudice any party, and would advance due process by affording a needed public participation step in the Commission's system of operation.

II. THE COMMISSION SHOULD APPOINT A SCIENTIFIC ADVISORY TASK FORCE.

Further, a Science Advisory Task Force is authorized for generic issues such as health and safety, concerns raised in the above-captioned Freeborn Wind docket.

216E.08 PUBLIC PARTICIPATION

Subd. 4. Scientific advisory task force.

The commission may appoint one or more advisory task forces composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long-range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees. The task forces expire as provided in section [15.059, subdivision 6](#). The time allowed for completion of a specific site or route procedure may not be extended to await the outcome of these generic investigations.

Minn. Stat. §216E.08, Subd. 4.

A Scientific Advisory Task Force would be helpful to the Commission to inform the record about impacts of wind turbines on human health and the environment. At present, for example, there are no rules that address infrasound generated by wind turbines. In response to a Petition for Ch. 7030 Rulemaking (noise) which failed to initiate the rulemaking process, the MPCA's Commissioner stated:

After consulting with colleagues at the Minnesota Departments of Health and Commerce, I have concluded that the current understanding of wind turbine noise and its potential effects is insufficient to support rulemaking at this time. Discussions will continue among the agencies listed above and we will monitor the science (as resources allow) to inform our decision about rulemaking in the future.

Letter, John Linc Stine, MPCA, to Carol Overland, September 12, 2016 (attached). Not having sufficient information is reason to investigate. Further, as the Commission knows, sound monitoring was ordered to address the multiple Bent Tree complaints, but as the Commission may not know, the sound monitors were removed in July and have not been replaced. How will

monitoring be completed without monitors in place? How will the “current understanding of wind turbine noise and its potential effects” become sufficient without an effort to gather information and inform the agencies? This could be best accomplished with a charge to a Scientific Advisory Task Force with oversight by, and reporting to, the Commission.

This is the appropriate time for the Commission to appoint a Scientific Advisory Task Force, and under the statute, it may not extend the siting schedule, so delay is not a concern. The timing is ripe for a Scientific Advisory Task Force because the Commission has Ordered sound studies for the Bent Tree wind project in response to multiple complaints of wind noise and shadow flicker that have not abated over time. The sound study order requires that sound monitoring equipment be placed at locations near complainants’ property to determine sound levels of the project. Some attempts at mitigation of been proffered, such as blinds over windows to address shadow flicker. But thus far, this study has produced nothing. On the other hand, now another wind project has been proposed in Freeborn County, without sound monitoring to inform the record.

The charge of the Scientific Advisory Task Force should be targeted to address the areas identified by Commissioner Stine as insufficient, including public health impacts of wind turbines, specifically including issues raised by the Dept. of Health in the Commission’s docket 09-845. The Association of Freeborn County Landowners requests that inquiry regarding these issues, wind turbine sound, potential for shadow flicker and adequacy and consistency of setbacks in the interests of health and public safety be included in the charge for the Scientific Advisory Task Force and that a report be drafted by the Task Forces. Incorporation of this information is necessary to fully inform the record in all wind siting dockets and to assure these issues are addressed. A Scientific Advisory Task Force is an authorized vehicle for these

concerns to be raised and this inquiry to occur. The study underway via Commerce can be incorporated into the work of the Scientific Advisory Task Force and instant docket as the studies and work of the Science Advisory Task Force becomes available. The Scientific Advisory Task Force may not complete its work prior to the end of Comment Period and Briefing as scheduled for this docket, but that is no reason for a delay in appointment and charge to a Scientific Advisory Task Force. Appointment of a Scientific Advisory Task Force would not prejudice any party, and would advance building the record regarding impacts of wind turbines.

III. CONCLUSION

At this time the Association of Freeborn County Landowners moves and requests that an Advisory Task Force and a Scientific Advisory Task Force be appointed by the Commission under its authority under Minn. Stat. §216E.08, Subd. 1 and Subd. 4, and requests that this matter be certified to the Commission for consideration of appointment of the Advisory Task Force and Scientific Advisory Task Force. The Commission alone has authority to appoint task forces. Minn. R. 1405.2200.

September 20, 2017



Carol A. Overland MN #254617
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**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
for the
MINNESOTA PUBLIC UTILITIES COMMISSION**

CERTIFICATE OF SERVICE

ASSOCIATION OF FREEBORN COUNTY LANDOWNERS

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

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

I, Carol A. Overland, hereby certify that I have this day, served copies of the attached Motion for Certification and Petition for Advisory and Scientific Advisory Task Forces by electronic filing and eService .



September 20, 2017

Carol A. Overland MN #254617
Attorney for Association of Freeborn
County Landowners
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Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | 651-282-5332 TTY | www.pca.state.mn.us | Equal Opportunity Employer

September 12, 2016

Carol Overland
Legalelectric, Inc.
1110 West Avenue
Red Wing, MN 55066

Dear Ms. Overland:

RE: Petition for Rulemaking for Wind Turbine Noise Standards, Minnesota Rules Chapter 7030

After consulting with colleagues at the Minnesota Departments of Health and Commerce, I have concluded that the current understanding of wind turbine noise and its potential effects is insufficient to support rulemaking at this time. Discussions will continue among the agencies listed above, and we will monitor the science (as resources allow) to inform our decision about rulemaking in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "John Linc Stine".

John Linc Stine
Commissioner

cc: Commissioner Ehlinger, Minnesota Department of Health
Commissioner Rothman, Minnesota Department of Commerce
Executive Secretary Daniel Wolf, Public Utilities Commission

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

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

ISSUE DATE: December 22, 2017

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

ORDER DENYING PETITION FOR ADVISORY TASK FORCES

PROCEDURAL HISTORY

On June 15, 2017, Freeborn Wind Energy LLC (Freeborn) filed an application for a large wind energy conversion system (LWECS) of up to 84 megawatts.

On August 31, 2017, the Commission found the application complete and referred the case to the Office of Administrative Hearings for contested case proceedings.

On September 20, 2017, the Association of Freeborn County Landowners, an intervenor in this proceeding, filed a motion requesting that the Administrative Law Judge certify to the Commission its petition for appointment of both an advisory task force and a scientific advisory task force.¹

On October 4, 2017, Freeborn filed comments opposing the request to appoint advisory task forces.

On October 5, 2017, the Association of Freeborn County Landowners filed reply comments.

On October 6, 2017, the Administrative Law Judge assigned to the case issued an order certifying to the Commission the Association of Freeborn County Landowners' petition.

On October 24, 2017, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

The Association of Freeborn County Landowners (AFCL) filed a motion under Minn. R.

¹ The Association includes over 100 landowners and residents within and adjacent to the site footprint of the proposed project.

1405.2200 requesting that the Administrative Law Judge certify to the Commission its petition for appointment of an advisory task force and a scientific advisory task force in this case. The Administrative Law Judge certified the request to the Commission.

Under Minnesota law, separate statutes govern the permitting processes of various large energy facilities. And although the process for siting a Large Wind Energy Conversion System (LWECS) falls under Minn. Stat. Ch. 216F, there are provisions of Minn. Stat. Ch. 216E (which governs the permitting of other large power plants, as well as high-voltage transmission lines) that apply to LWECS. Specifically, Minn. Stat. § 216F.02 states that Minn. Stat. § 216E.08, which authorizes the Commission to appoint one or more advisory task forces, including a scientific task force, applies to the siting of LWECS.

The statutory provisions governing task forces read as follows:

216E.08 Public Participation.

Subdivision 1. Advisory task force.

The commission may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section 15.059, subdivision 6. At the time the task force is appointed, the commission shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the commission in the charge, whichever occurs first.

Subd. 4. Scientific advisory task force.

The commission may appoint one or more advisory task forces composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long-range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees. The task forces expire as provided in section 15.059, subdivision 6. The time allowed for completion of a specific site or route procedure may not be extended to await the outcome of these generic investigations.

AFCL stated that advisory task forces provide necessary information relevant to the Commission's siting and routing decisions, and in this case, an advisory task force would provide information on material issues, including: wildlife habitat and foraging range; designated

wetlands on private property; wind turbine sound; potential for shadow flicker; and adequacy of setbacks in the interest of health, environment, and public safety. AFCL stated that a scientific advisory task force would inform the record on the impacts of wind turbines on human health and the environment and stated that a lack of rulemaking at the state level to regulate the impacts of LWECS compels the need for advisory task forces to assist in developing the record on these issues in this case.

In response to AFCL's request, Freeborn emphasized that task forces are ordinarily charged with evaluating sites or routes under consideration in the scoping process. Because there is no scoping process to analyze potential impacts and potential alternatives in this case (there is no requirement for a scoping process as part of environmental review in wind siting cases), Freeborn stated that AFCL's request is outside the scope of an advisory task force. Freeborn also stated that these issues will be developed as part of the contested case process and that appointment of an advisory task force would not serve a distinct purpose in developing the record on these issues.

The Commission concurs with Freeborn that the contested case process will provide a full and fair opportunity for parties, including AFCL, to develop the issues raised. The contested case process includes a discovery procedure and evidentiary hearings conducted by an Administrative Law Judge during which parties may call and question witnesses and offer exhibits and other evidence. For these reasons, the Commission will deny the requests for an advisory task force and a scientific advisory task force.

ORDER

1. The Commission hereby denies the petition for an advisory task force.
2. The Commission hereby denies the petition for a scientific advisory task force.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

July 30, 2019

**OFFICE OF
APPELLATE COURTS**

CASE TITLE:

**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**

Court of Appeals Case No. _____

PETITIONER'S STATEMENT OF THE CASE

PUC Docket: IP-6946/WS-17-410
OAH Docket: 80-2500-34633

Date of Decision:

Order Approving Amendment of Site Permit
May 10, 3019
Order Approving Siting Permit
December 19, 2019

**Date of Decision Triggering Appeal Time:
July 2, 2019**

Relator Association of Freeborn County Landowners, for its Statement of the
Case, states as follows:

1. Agency of case origination:

This case originated with the Minnesota Public Utilities Commission (hereinafter
"PUC"). The Commission referred the wind project site application to Office of
Administrative Hearings for a Contested Case Hearing and Public Hearing, and the
Administrative Law Judge issued a Recommendation to the PUC that the site permit be
denied. The PUC then made its decision of December 19, 2019, granting the permit,

Reconsidered and Amended Site Permit with Order of May 10, 2019, and then denied Motion for Reconsideration on July 2, 2019.

2. Jurisdictional statement

a. Statute, Rule, or Other Authority Authorizing Certiorari Appeal.

Certiorari appeal of Public Utilities Commission decisions are taken pursuant to Minn. Stat. §216B.52 and §216E.15. The Administrative Procedures Act authorizes review in the Court of Appeals by writ of certiorari. Minn. Stat. §14.6-683; Minn. R. Civ. App. P. 103.03(g) and 115.01.

b. Authority Fixing Time Limit for Obtaining Certiorari Review.

Relators appeal the PUC's second "final" decision on the matter, its May 10, 2019 Order granting a Site Permit for the Freeborn Wind project and the PUC's July 2, 2019 denial of AFCL's Motion. This appeal is timely filed no more than 30 days after the PUC's July 2, 2019 Order (Minn. Stat. §14.64).

c. Finality of Order or Judgment.

This Order amending the site permit is likely not final, as the docket is very active now. The Commission issued its first Order Granting Site Permit on December 19, 2018, and then issued this Amended Site Permit with its Order of May 10, 2019. The Commission denied Reconsideration on July 2, 2019. The Commission's action on Reconsideration would be "final" except that a material amendment request is expected. Xcel Energy has purchased Freeborn Wind and has requested approval of its acquisition from the Public Utilities Commission. The Commission will address the acquisition sometime after the comment period ends on July 29, 2019. Xcel Energy has stated that it

will file a petition to amend the site permit “in July,” and plans to substitute 32 larger turbines, and file a minimum of new noise and shadow flicker studies and a modified site plan. On the closing date of the sale, the seller, Invenergy, filed Notice of Termination of land leases and agreement affecting over 4,451 acres of the 17,435 acres of leased land, significantly altering the project from that permitted. AFCL has filed a Motion for Order to Show Cause requesting that the Commission stay the permit until the new Xcel siting information and plan is reviewed.¹

AFCL is filing this appeal within the statutory window for appeal. AFCL requests stay of consideration of this appeal until the Commission addresses Xcel Energy/NSPM’s acquisition and planned site permit amendment.

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

This is a case of first impression -- the first contested case held in Minnesota to address a wind site permit application under the wind siting statutes. Minn. Stat. Ch. 216F; Minn. R. Ch. 7854, including 7854.0500, Subp. 13; the Power Plant Siting Act statutes not exempted under Minn. Stat. §216F.02, including siting criteria of Minn. Stat. §216E.03, Subd. 7, and public participation as afforded by Minn. Stat. §216E.08; the Minnesota Administrative Procedures Act, Minn. Stat. Ch. 14 and rules of Minn. Ch. 1400 and 1405; and Minnesota Pollution Control Agency’s noise standards, Minn. R. 7030.0400 and Dept. of Commerce wind siting noise guidelines.

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

¹ In its Addendum, AFCL has included Xcel’s request for approval of acquisition, the Commission’s Notice of Comment Period, and AFCL’s Motion for Order to Show Cause.

This appeal will address whether the Public Utilities Commission made errors of law when it amended the Freeborn Wind Site Permit in its May 10, 2019 Order; specifically the Commission's approval and amendment of the site permit, and omitting other permit language, based on a private agreement excluding parties; the Commission's approval and amendment of the site permit changing material terms not supported by the record; the Commission's approval and amendment of the site permit that improperly utilized siting standards developed for small (under 25MW) wind; the Commission's approval and amendment of the site permit based on a change of the ground factor noise modeling assumption from 0.0 to 0.5, a substantive change, when there is no modeling in the record that utilizes ground factor of 0.5; whether the Commission's approval and amendment of the site permit authorizing delay of production of noise studies until after approval of the permit is an error of law in the absence of any demonstration prior to approval that Freeborn Wind could comply with state noise standards; approval and amendment of the site permit where homes are expected to experience shadow flicker and relies on a permit term of "abnormal level of complaints" to trigger monitoring; failure to require production of decommissioning information and postponing production of decommissioning planning to post-permit stage without public review; and disregard of public opposition and approving the project based on private agreement between Freeborn Wind and Commerce-EERA and MPCA violates the Commission's public participation mandate under Minn. Stat. §216E.08.

5. List specific issues proposed to be raised on appeal.

The errors of law and arbitrary and capricious acts to be raised include:

- Whether a Siting Order that relies on “Order Establishing General Wind Permit Standards” (Docket No. E, G-999/M-07-1102) for siting of a Large Wind Energy Conversion System, wind projects greater than 25MW constitutes legal error.
- Where secret meetings are held, excluding parties, and Commission by its Order adopts terms, conditions and “Special Conditions” of that private agreement, and amends permit Order, does that constitute legal error, a violation of the Commission’s public participation and public interest mandate of Minn. Stat. §216E.08.
- Where the Commission deletes project specific noise conditions in Permit section 7.4 and gives the project specific “Special Conditions” of section 6, stemming from a private agreement between Applicant and agencies, express precedence over other conditions of the permit, and inserting conditions which delay timing of Applicant’s production until after permit is issued, does that constitute legal error and violation of Minn. R. 7030.0400.
- Where all wind noise modeling provided by applicant in the record is based on a 0.0 ground factor assumption, upon which the ALJ Recommended the permit be denied due to failure to demonstrate compliance, is issuing a site permit utilizing 0.5 ground factor, where there is no modeling provided by applicant with 0.5 ground factor, does this constitute an arbitrary and capricious action, unsupported by the record, and legal error?
- Where the Commission relieves applicant of burden of proof and production to demonstrate that it can comply with statutory and regulatory requirements, i.e., noise, shadow flicker, decommissioning, and issues permit for a project and delays proof and production until after permit issued, does that constitute legal error.
- Where permit complaint procedures and enforcement are demonstrably ineffective and burdensome, as reflected in the record, and Commission failed to develop revised complaint procedures and incorporate into permit, and relied on “abnormal level of complaints” to trigger monitoring, does that constitute legal error.
- Where the Commission disregards strong public participation, intervention, and party and public testimony showing substantive issues and that the community does not consent to the project encroaching on the community, is issuance of a site permit arbitrary and capricious and constitutes legal error.

6. Related appeals.

There are no prior or pending appeals in separate actions raising similar issues. At this time it is not known whether any other party will intervene.

In this case, the Commission's decision here appealed is likely not "final." The permit has already been amended once, and an amendment request is anticipated in the immediate future. As above, Xcel Energy has purchased Freeborn Wind and has requested approval of its acquisition from the Public Utilities Commission. The Commission will address the acquisition sometime after the comment period ends July 29, 2019. Xcel Energy has stated in emails and at public and governmental meetings that it will file a petition to amend the site permit "in July," and has publicly announced plans to substitute 32 larger turbines and to file new noise and shadow flicker studies and a modified site plan. A decommissioning plan is also due to be filed. On the closing date of the sale, the seller, Invenergy, filed Notice of Termination of land leases and agreement affecting over 4,451 acres of the 17,435 acres of leased land, significantly altering the site plan of the project from the site plan permitted (see Site Permit, Section 2). AFCL has filed Motion for Order to Show Cause and stay permit until the new siting information is reviewed, vetted, and approved.² Thus, with an amendment forthcoming and these changes in the project over the last month, it is doubtful that Public Utilities Commission's "final" decision in this matter.

AFCL is filing this appeal so as not to miss the statutory window for appeal of the PUC's Amendment Order. It would be prudent to hold this appeal in abeyance and not

² In its Addendum, in addition to PUC Orders, AFCL has included AFCL's letters to Commission with actual notice of planned changes to project, PUC's Notice of Comment Period regarding Xcel/NSPM acquisition of Freeborn Wind, and AFCL's Motion for Order to Show Cause.

waste the court's and others' time and resources pending the Commission's consideration of Xcel Energy/NSPM's pending amendment request. AFCL requests stay of consideration of this Siting Permit appeal until after the Commission addresses Xcel Energy/NSPM's acquisition and the immediately forthcoming site permit amendment request.

7. Contents of record.

There is an extensive record in this proceeding. For the purposes of Rules 115.04, subd. 1 and 110.02, subd. 1(c), Relator provides notice that a separate transcript is not necessary to review the issues on appeal because the transcript has been prepared in this matter, and the original transcript is part of the record, on file with the PUC. These transcripts, and the record, will be transmitted to the Court of Appeals under Rule 111.01 and 115.04.

8. Is oral argument requested? Yes. At another location? No.

9. Identify the type of brief to be filed. Formal brief under [Rule 128.02](#).

10. Names, addresses, zip codes telephone numbers and emails of attorneys:

Relator - Association of Freeborn County Landowners' Counsel – as below

Attorney for Minnesota Public Utilities Commission:

Daniel Wolf, Executive Secretary
Thomas E. Bailey, General Counsel
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Project Owner Permittee and Former Owner Permittee (courtesy copy):

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July 30, 2019

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ATTORNEY FOR ASSOCIATION OF
FREEBORN COUNTY LANDOWNERS

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

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

**ORDER GRANTING INTERVENTION
TO ASSOCIATION OF FREEBORN
COUNTY LANDOWNERS**

The Association of Freeborn County Landowners (AFCL) filed a Notice of Appearance and Petition to Intervene (Petition) pursuant to Minn. R. 1405.0900 (2017) in this matter on September 1, 2017.¹ Freeborn Wind Farm, LLC (Freeborn Wind), the only party of record at the time the AFCL Petition was filed, did not file an objection to AFCL's Petition.

According to its Petition, AFCL is "an informal association of over 100 landowners and residents in and adjacent to the site footprint"² of the proposed wind farm.

Minnesota Rules part 1405.0900, subpart 1, requires that a petitioner demonstrate how its "legal rights, duties, or privileges may be determined or affected by the proceedings."³ The petitioner also must show how its legal rights, duties, or privileges are not otherwise represented in the proceeding.⁴

AFCL asserted that its members' legal rights, duties and their privileges will be determined or affected by this contested case. According to the Petition, many of the AFCL landowners have been approached to sign lease agreements. In addition, Freeborn Wind plans to construct turbines on land immediately adjacent to the property of many AFCL members. The AFCL members maintained that their legal rights, duties, and privileges will potentially be affected due to impacts on their health, peace of mind,

¹ AFCL cited both Minn. R. 1400.6200 (2017) and Minn. R. 1405.0900 in its petition, presumably because the Public Utilities Commission (Commission), in its Order Finding Application Complete and Varying Time Limits; Notice and Order for Hearing (Aug. 31, 2017) inadvertently stated that this proceeding would be conducted in accordance with Minn. R. 1400.5100 to 1400.8400 (2017). The Commission thereafter issued an Erratum Notice in which it noted that Minn. R. 1405.0200 to 1405.2800 (2017) apply to the hearing procedure in this matter. Therefore, Minn. R. 1405.0900 properly governs this intervention.

² AFCL Petition for Intervention (Petition) at 1 (Sept. 1, 2017).

³ Minn. R. 1405.0900, subp. 1.

⁴ *Id.*

ability to use and enjoy their properties, and the value and marketability of their properties, all as result of the construction of the Freeborn Wind project. The AFCL members argued that their interests as directly affected landowners are unique and not otherwise represented in this contested case. The members raised specific issues including, but not limited to, evidence regarding physical and economic impacts of wind turbines, noise and infrasound, shadow flicker resulting from turbines, impacts on wildlife, property values and tax revenues, interference with communications, and fair dealings with landowners by the company.

Conclusion

The Administrative Law Judge finds that the Petition to Intervene filed by the AFCL demonstrates that the legal rights, duties or privileges of the Petitioner, or its members, may be determined or affected by this proceeding. Furthermore, the Administrative Law Judge finds that no other party participating in the case adequately represents the interests of the Petitioner.

ORDER

IT IS HEREBY ORDERED that the petition filed by the AFCL to intervene with full party rights is **GRANTED**.

Dated: September 12, 2017



LAURASUE SCHLATTER
Administrative Law Judge

September 12, 2017

See Attached Service List

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

**OAH 80-2500-34633
MPUC WS-17-410**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **ORDER GRANTING INTERVENTION TO ASSOCIATION OF FREEBORN COUNTY LANDOWNERS** in the above-entitled matter.

If you have any questions, please contact my legal assistant Katie Lin at (651) 361-7911 or katie.lin@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,



LAURASUE SCHLATTER
Administrative Law Judge

LSS:klm
Enclosure
cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Application of Freeborn Wind Farm, LLC for a Large Wind Energy Conversion System Site Permit for the 84 MN Freeborn Wind Farm in	OAH Docket No.: 80-2500-34633
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Kendra McCausland certifies that on September 12, 2017 she served the true and correct **ORDER GRANTING INTERVENTION TO ASSOCIATION OF FREEBORN COUNTY LANDOWNERS** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

First Name	Last Name	Email	Company Name	Address	Delivery Method
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service
Ian	Dobson	Residential.Utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service
Emerald	Gratz	emerald.gratz@state.mn.us	Office of Administrative Hearings	PO Box 64620 Saint Paul, Minnesota 55164-0620	Electronic Service
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Court of Appeals of Minnesota.

MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY, Appellant,

v.

MINNESOTA PUBLIC UTILITIES

COMMISSION, Respondent,

Minnesota Environmental

Quality Board, Respondent,

and

Enbridge Energy, Limited Partnership, et

al., defendant intervenors, Respondents.

No. A10-812.

|

Dec. 14, 2010.

Synopsis

Background: Environmental group brought action against Minnesota Public Utilities Commission (MPUC) alleging violations of Minnesota Environmental Policy Act (MEPA) arising from MPUC's grant of petroleum company's application for certificate of need and issue of pipeline routing permit. Petroleum company intervened and group amended complaint to include claims against MPUC and company alleging violations of Minnesota Environmental Rights Act (MERA). The District Court, Clearwater County, granted summary judgment in favor of MPUC and petroleum company. Group appealed.

Holdings: The Court of Appeals, Larkin, J., held that:

[1] MPUC complied with alternative environmental-review process and thereby satisfied its environmental review responsibilities;

[2] project was not connected to or phased action;

[3] MPUC properly considered cumulative effects of project;

[4] MPUC adequately considered and addressed concerns of Department of Natural Resources (DNR);

[5] groups comments were beyond scope of necessary environmental review;

[6] MERA claims against company were procedurally barred;

[7] MERA claims against MPUC were not procedurally barred; and

[8] MEPA, rather than MERA, was proper vehicle to challenge adequacy of MPUC's environmental review.

Affirmed.

West Headnotes (8)

[1] Environmental Law Duty of Government Bodies to Consider Environment in General

Minnesota Public Utilities Commission (MPUC) complied with alternative environmental-review process and thereby satisfied its environmental review responsibilities under the Minnesota Environmental Policy Act (MEPA) in granting petroleum company's application for certificate of need and issuing pipeline routing permit, where, after numerous public hearings, administrative law judge (ALJ) issued his report in which the ALJ made findings of fact regarding relevant environmental criteria, and MPUC independently reviewed record, not blindly accepting ALJ's report of company's application. M.S.A. § 116D.04.

[2] Environmental Law Mining; Oil and Gas

Proposed petroleum pipeline project was not a connected or phased action with two other planned pipeline projects so as to require a single environmental review by Minnesota Public Utilities Commission (MPUC) under administrative rules; first pipeline project was intended to begin operating more than one year before the other two pipelines, pipelines were intended to be used for different purposes,

and fact that the public hearings on the three proposed pipelines were consolidated for public convenience did not mean that the pipelines are connected actions as defined by rule. [Minnesota Rules, part 4410.1700](#).

[3] **Environmental Law** 🔑 **Duty of Government Bodies to Consider Environment in General**

Minnesota Public Utilities Commission properly considered the direct, indirect, and cumulative effects of proposed pipelines on future projects pursuant to administrative rules in issuing pipeline routing permit, where the MPUC noted that, based on the best available evidence, that the preferred route would have had no greater cumulative effect than any feasible alternative. [Minnesota Rules, part 7852.1900](#).

[4] **Environmental Law** 🔑 **Duty of Government Bodies to Consider Environment in General**

Minnesota Public Utilities adequately considered and addressed Department of Natural Resources' (DNR) concerns before granting certificate of need and issuing pipeline routing permit for proposed petroleum pipeline, where, although MPUC did not respond to each of the DNR's comments with a great deal of specificity, it did address each of them in some respect. [Minnesota Rules, part 7852.1800](#).

[5] **Environmental Law** 🔑 **Duty of Government Bodies to Consider Environment in General**

Environmental group's comments concerning proposed petroleum pipeline's effects on mining, refining, and fuel consumption in general were beyond the scope of the necessary environmental review required by Minnesota Public Utilities Commission (MPUC). [Minnesota Rules, part 7852.1900](#).

[6] **Environmental Law** 🔑 **Preservation of Error in Administrative Proceeding**

Environmental group's Minnesota Environmental Responsibility Act (MERA)

claims against petroleum company arising out of proposed pipeline were procedurally barred by section of statute governing the process of reconsideration of Minnesota Public Utilities Commission (MPUC) decisions that precluded a party from bringing a cause of action arising out of MPUC decision unless it first raised the ground for claim in petition for rehearing; nothing in statute limited its application to only appeals from MPUC decisions, and, although group petitioned for reconsideration of MPUC's pipeline-routing decision, its petition was based solely on grounds that MPUC issued the routing permit and certificate of need prior to completion of adequate environmental review for the project. [M.S.A. § 216B.27](#).

[7] **Environmental Law** 🔑 **Preservation of Error in Administrative Proceeding**

Environmental group's Minnesota Environmental Responsibility Act (MERA) claims against Minnesota Public Utilities Commission (MPUC) arising out of proposed petroleum pipeline were not procedurally barred by section of statute governing the process of reconsideration MPUC decisions that precluded a party from bringing a cause of action arising out of MPUC decision unless it first raised the ground for claim in petition for rehearing, where group raised issue of adequacy of MPUC's environmental review in its petition for reconsideration. [M.S.A. § 216B.27](#).

[8] **Environmental Law** 🔑 **Nature and Form of Remedy; Applicable Law**

Minnesota Environmental Policy Act (MECA), rather than Minnesota Environmental Responsibility Act (MERA), was proper vehicle to challenge adequacy of Minnesota Public Utilities Commission's (MPUC) environmental findings with regards to a proposed petroleum pipeline, where MPUC's role was limited to conducting environmental review of the project at issue. [M.S.A. § 116D.01](#).

Clearwater County District Court, File No. 15–CV–08–865.

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Considered and decided by [WRIGHT](#), Presiding Judge; [LARKIN](#), Judge; and [STAUBER](#), Judge.

UNPUBLISHED OPINION

[LARKIN](#), Judge.

*1 Appellant challenges the district court's award of summary judgment in respondents' favor on appellant's claims under the Minnesota Environmental Policy Act and Minnesota Environmental Rights Act. Because respondents are entitled to judgment as a matter of law, we affirm.

FACTS

Respondent Enbridge Energy owns and operates interstate common-carrier pipelines for the transportation of crude petroleum, derivatives, and related products. This case involves Enbridge's LSr pipeline, which is an approximately 313-mile long, 20-inch diameter, crude-oil pipeline that runs between Manitoba, Canada and Clearbrook, Minnesota. Prior to constructing the LSr pipeline, Enbridge filed applications for a pipeline routing permit and a certificate of need with respondent Minnesota Public Utilities Commission (MPUC). Enbridge submitted an Environmental Assessment Supplement (EAS), as required by [Minnesota Rule 7852.2700 \(2007\)](#), with its applications. After receiving comments on the applications, MPUC accepted the applications as

substantially complete and referred the matters to the office of administrative hearings for contested-case proceedings.

The general public was provided with notice of the proposed pipeline, and public informational meetings were held in six Minnesota counties. At those hearings, the administrative-law judge (ALJ) received public comments regarding the LSr and portions of two other pipelines, the Alberta Clipper and Southern Lights. In response to preliminary input from landowners and others, Enbridge filed a revised pipeline route request for the LSr. Following additional public hearings, the ALJ issued a report recommending that MPUC issue the certificate of need and routing permit subject to conditions.

The matter came before MPUC for consideration. MPUC granted Enbridge's application for a certificate of need and issued the pipeline routing permit. Appellant Minnesota Center for Environmental Advocacy (MCEA) filed a request for reconsideration, which MPUC denied.

MCEA filed suit against MPUC in district court, claiming violations of the Minnesota Environmental Policy Act (MEPA). Enbridge intervened in the action. Thereafter, MCEA filed an amended complaint alleging additional MEPA claims against MPUC, as well as claims against MPUC and Enbridge under the Minnesota Environmental Rights Act (MERA). The district court granted summary judgment in respondents' favor on all claims. This appeal follows.

DECISION

“On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court [] erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn.1990). “We review de novo whether a genuine issue of material fact exists” and “whether the district court erred in its application of the law.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn.2002).

I.

*2 We first review the award of summary judgment on MCEA's MEPA claims. The purposes of MEPA are

(a) to declare a state policy that will encourage productive and enjoyable harmony between human beings and their environment; (b) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings; and (c) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.

[Minn.Stat. § 116D.01 \(2008\)](#).

MEPA requires that “[w]here there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit [(RGU)].” [Minn.Stat. 116D.04](#), subd. 2a (2008). “Decisions on the need for an environmental assessment worksheet, the need for an environmental impact statement and the adequacy of an environmental impact statement may be reviewed by a declaratory judgment action in the district court of the county wherein the proposed action, or any part thereof, would be undertaken.” [Minn.Stat. § 116D.04](#), subd. 10 (2008). MCEA asked the district court to declare that MPUC violated MEPA by failing “to provide the required environmental analysis, instead relying on environmental information prepared solely by the pipeline company.”

Because we review the district court's award of summary judgment on the MEPA claims de novo, *see STAR Ctrs., Inc.*, [644 N.W.2d at 77](#), we ultimately review the agency decision directly. When reviewing an administrative agency decision, we may affirm, reverse, modify the decision, or remand for further proceedings if the “substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or

(d) affected by other error of law; or

(e) unsupported by substantial evidence in view of the entire record as submitted; or

(f) arbitrary or capricious.

[Minn.Stat. § 14.69 \(2008\)](#).

The party seeking appellate review of an agency decision has the burden of proving that the decision was the product of one or more of these statutory infirmities. *Markwardt v. State, Water Res. Bd.*, [254 N.W.2d 371, 374 \(Minn.1977\)](#). The decisions of administrative agencies are presumed to be correct and to have been based upon the application of the expertise necessary to decide technical matters that are within the scope of the agencies' concerns and authority. *In re Universal Underwriters Life Ins. Co.*, [685 N.W.2d 44, 45–46 \(Minn.App.2004\)](#). In reviewing agency decisions, the courts must exercise restraint so as not to substitute their judgment for that which is the product of the technical training, education, and experience found within the agency. *Id.* We will not hold an agency's decision arbitrary and capricious if there is a rational connection between the facts found and the decision, and if the agency has reasonably articulated the basis for its decision. *Id.* at 45. “We defer to the agency's expertise in fact finding, and will affirm the agency's decision if it is lawful and reasonable.” *In re an Investigation into Intra-LATA Equal Access & Presubscription*, [532 N.W.2d 583, 588 \(Minn.App.1995\)](#), *review denied* (Minn. Aug. 30, 1995).

A. Mootness

*3 Respondents assert that because the pipeline has already been built and is fully operational, MCEA's MEPA claims are moot. A moot case is defined as “[a] matter in which a controversy no longer exists; a case that presents only an abstract question that does not arise from existing facts or rights.” *Black's Law Dictionary* 1099 (9th ed.2009). The issue presented here is not abstract; a controversy still exists for which relief could be provided. Moreover, “[w]hen evaluating the issue of mootness in [National Environmental Policy Act (NEPA)] cases, [federal courts] have repeatedly emphasized that if the completion of the action challenged under NEPA is sufficient to render the case nonjusticiable, entities could merely ignore the requirements of NEPA, build [their] structures before a case gets to court, and then hide behind the mootness doctrine. Such a result is not acceptable.” *Cantrell v. City of Long Beach*, [241 F.3d 674, 678 \(9th Cir.2001\)](#) (quotation omitted). We agree with the federal

court's assessment and will consider the merits of MCEA's MEPA claims.

B. Compliance With Environmental Review Responsibilities

[1] MCEA challenges the adequacy of MPUC's environmental review, arguing that MPUC "violated MEPA by failing to conduct its own thorough, independent analysis of environmental effects." MCEA argues that "once the PUC received the EAS, it had the responsibility for ensuring that the EAS (and any other environmental document it may have independently prepared) complied with applicable MEPA rules, as well as the pipeline routing rules," and that MPUC failed to do so.

Although MEPA requires "a detailed environmental impact statement prepared by the responsible governmental unit," it also provides that the Environmental Quality Board (EQB) "shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement." *Minn.Stat. § 116D.04*, subds. 2a, 4a (2008). Pursuant to this grant of authority, the EQB has promulgated rules that provide an alternative form of environmental review for proposed pipelines, which is contained in the rules governing the routing permit process. *See generally* *Minn. R. 7852* (2007).

The applicable rule states that "[t]he applicant must also submit to the commission along with the application an [EAS containing an] analysis of the potential human and environmental impacts that may be expected from pipeline right-of-way preparation and construction practices and operation and maintenance procedures." *Minn. R. 7852.2700*. The impacts to be addressed include, but are not limited to, human settlements; the existence and density of populated areas; natural areas, wildlife habitat, water, and recreational lands; and land of historical, archaeological, and cultural significance. *Minn. R. 7852.0700*. Following public review and contested case hearings, MPUC must "consider" the environmental impacts of the proposed pipeline route "based on the public hearing record" and provide the reasons for its decision in written findings of fact. *Minn. R. 7852.1800, 1900*.

*4 The record shows that MPUC followed this process. After numerous public hearings, the ALJ issued his report. In that report, the ALJ made findings of fact regarding the relevant environmental criteria. The ALJ cited to specific

record evidence that substantially supports the findings. Based on those findings, the ALJ recommended issuance of a route permit. Next, MPUC independently reviewed the record. MPUC's order granting the pipeline routing permit does not blindly accept Enbridge's application or the ALJ's report. MPUC stated:

Having examined the record itself and carefully considered the ALJ's Report, the Commission concurs in nearly all his findings of fact and conclusions of law. At a few points, however, the Commission is persuaded that the record better supports the findings and conclusions offered by Enbridge and [Office of Energy Security] for the reasons discussed above.

MPUC complied with the alternative environmental-review process and thereby satisfied its environmental review responsibilities under MEPA.

C. Connected and Phased Actions

[2] MCEA contends that MPUC should have conducted a single environmental review for the LSr project and two other Enbridge pipeline projects: the Alberta Clipper and the Southern Lights. In support of its position, MCEA cites the Minnesota Administrative Rules, which provide that "connected actions or phased actions shall be considered a single project for purposes of the determination of need for an [Environmental Impact Statement (EIS)]." *Minn. R. 4410.1700*, subp. 9 (2007).

Two projects are considered connected actions "if a responsible governmental unit determines they are related in any of the following ways: A. one project would directly induce the other; B. one project is a prerequisite for the other and the prerequisite project is not justified by itself; or C. neither project is justified by itself." *Minn. R. 4410.0200*, subp. 9c (2007). A phased action "means two or more projects to be undertaken by the same proposer that a RGU determines: A. will have environmental effects on the same geographic area; and B. are substantially certain to be undertaken sequentially over a limited period of time." *Id.*, subp. 60 (2007).

But [Minn. R. 4410.2000](#) expressly contemplates separate environmental review of a pipeline, like the LSr project, that is part of a larger planned network. Although the rule states that “[m]ultiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when determining the need for an EIS and in preparing the EIS,” the rule goes on to state:

For proposed projects such as highways, streets, *pipelines*, utility lines, or systems where the proposed project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU shall treat the present proposal as the total proposal or select only some of the future elements for present consideration in the threshold determination and EIS. These selections must be logical in relation to the design of the total system or network and must not be made merely to divide a large system into exempted segments.

*5 [Minn. R. 4410.2000](#), subp. 4 (emphasis added).

This rule is applicable here. The LSr project is part of Enbridge's planned pipeline network. Enbridge intended to begin operating the LSr pipeline more than one year before the other two pipelines. Therefore, the treatment of the LSr project as the total proposal was logical in relation to the design of the total network and was not made merely to “divide a large system into exempted segments.”

Moreover, the LSr, Alberta Clipper, and Southern Lights pipelines are not connected actions. MCEA asserts that the three pipelines meet the definition of connected and phased actions because “they are dependent on each other for their existence.” But the record shows that the three projects serve different purposes: the LSr carries light crude oil, the Alberta Clipper is intended to transport heavy crude oil, and the Southern Lights is intended to carry diluent. MCEA claims that LSr is a prerequisite for Southern Lights because Southern Lights will connect to Line 13, which will have its flow reversed to carry diluents and LSr will replace the crude

transport capacity lost through the reversal of Line 13. But this does not render LSr a prerequisite for Southern Lights. Even though capacity replacement will result from construction of LSr, the record shows that the LSr was designed to alleviate existing bottlenecks in the pipeline system. Two actions are connected only if one project is a prerequisite for another and the prerequisite is not justified on its own; LSr is self-justified. And although these pipelines appear to be phased actions as defined by the rule, under [Minn. R. 4410.2000](#), subp. 4, it was unnecessary to consider the three pipelines as a single project.

MCEA also alleges that MPUC “recognized the connected nature of the three pipelines and considered them as one project until just prior to the environmental review stage, at which time it arbitrarily split the LSr pipeline from the other two for permitting purposes.” The record refutes this allegation. MPUC established one docket for the LSr and another for Alberta Clipper and Southern Lights. The public-meeting notices indicated that the LSr was a separate action from the other two pipelines. The fact that the public hearings on the three proposed pipelines were consolidated for public convenience does not mean that the pipelines are connected actions as defined by rule.

Lastly, MCEA argues that MPUC violated MEPA by failing to analyze the environmental impacts associated with the installation of additional pumps to utilize the full capacity of the LSr line and the additional pipelines needed to utilize the full capacity of the Alberta Clipper line. But the record indicates that no additional pumping stations or additional lines are planned. MCEA provides no legal support explaining how the LSr project can be considered a “connected” or “phased” action with unplanned, hypothetical pumping stations or pipelines.

D. Direct, Indirect, and Cumulative Effects

*6 [3] “In selecting a route for designation and issuance of a pipeline routing permit, the commission shall consider the impact [of] the pipeline [on] the following: cumulative potential effects of related or anticipated future pipeline construction[.]” [Minn. R. 7852.1900](#), subp. 3(I). “[A] cumulative potential effects analysis is limited geographically to projects in the surrounding area that might reasonably be expected to affect the same natural resources ... as the proposed project.” *Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm'rs*, 713 N.W.2d 817, 830 (Minn.2006). The cumulative-effects analysis focuses on whether a project that may not significantly impact the

environment singularly causes a substantial impact when other planned or existing projects are considered.

MCEA asserts that the “cumulative, direct, and indirect impacts from the three pipelines must be examined, particularly as concerns the cumulative effects of these projects on global warming.” According to MCEA, the environmental effects that must be examined are the “effect on global warming from the increase in greenhouse gas emissions associated with refining the tar sands [in Alberta, Canada] and using the resulting petroleum, the destruction of carbon-sequestering boreal forests and bogs in northern Alberta, and the subsequent release of carbon from those boreal forests and bogs.” But rule 7852.1900, subp. 3(I), concerns the designation of a route for a proposed pipeline, whereas the effects with which MCEA is concerned relate to the tar-sand refining process in Alberta and the existence of the pipeline generally-not to the LSr pipeline route itself.

Moreover, MPUC considered the cumulative potential effects as specified by the rule. The ALJ noted that the revised route and alignment submitted by Enbridge “describes a 500 foot route width that will accommodate either, or both, of the LSr and Alberta Clipper pipelines, if approved by the Commission.” These pipelines were planned to run adjacent and parallel. The ALJ further noted that, beyond the LSr and the Alberta Clipper Projects (i.e., the Alberta Clipper and Southern Lights pipelines), Enbridge did not have plans for further pipeline construction. In its report, MPUC noted that “[b]ased on the best available evidence, the Commission finds that Enbridge's preferred route ... will have no greater cumulative potential effect on future pipeline construction than any feasible alternative.” This decision is presumed to be correct and to have been based upon the application of the expertise necessary to decide technical matters that are within the scope of the agencies' concerns and authority. See *Universal Underwriters Life Ins. Co.*, 685 N.W.2d at 45–46.

E. Failure to Respond to Comments

[4] MCEA also asserts that MPUC violated MEPA by failing to respond to the Minnesota Department of Natural Resource's (DNR) and MCEA's written comments expressing concerns about the LSr pipeline route and “by stating in response to comments by the DNR and MCEA that Enbridge could address any environmental concerns as they arose during the construction and operation of the pipeline.”

*7 MPUC evaluated the evidence in the record and considered the comments made by the DNR. In an

attempt to respond to the DNR's concerns, MPUC adopted seven supplemental findings, which were suggested by the Minnesota Department of Commerce's Office of Energy Security (OES), in its order granting the pipeline routing permit. Furthermore, the dictate that MPUC must consider evidence in the record does not necessarily mean that MPUC must specifically respond to each comment or concern. See *Minn. R. 7852.1800* (“The commission's route selection decision shall be based on the public hearing record and made in accordance with [part 7852.1900](#).”). And we must keep in mind the deference that is afforded when reviewing matters within an agency's expertise. See *Universal Underwriters*, 685 N.W.2d at 45–46 (“When reviewing agency decisions we adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience.”). Although MPUC did not respond to each of the DNR's comments with a great deal of specificity, it did address each of them in some respect. Based on our deferential standard of review, we conclude that MPUC adequately considered and addressed the DNR's concerns.

[5] MCEA also argues that MPUC failed to consider or respond to its written comments. MCEA takes issue with the lack of “analysis of any sort of the cumulative effects of all three pipelines on the development of the Alberta tar sands oil and the impact of that development on air quality in Minnesota or climate change.” Specifically, MCEA argues that the mining process generates enormous carbon emissions in Canada and the resulting import of crude oil from the mines causes increased refinery activity and fuel consumption in Minnesota, which also increases carbon emissions. MCEA is correct—MPUC did not address these concerns. But these concerns deal with mining, refining, and fuel consumption in general, whereas MPUC was concerned with the environmental impact resulting from a specific, proposed pipeline route. See *Minn. R. 7852.1900*. MCEA's general environmental concerns were beyond the scope of the necessary environmental review, and MPUC's review is not inadequate as a result of its failure to address them.

Lastly, MCEA misplaces reliance on *Trout Unlimited v. Minn. Dep't of Agric.* to support its argument that MPUC erred by allowing Enbridge to address environmental problems as they arose. 528 N.W.2d 903 (Minn.App.1995) *review denied* (Apr. 27, 1995). In *Trout Unlimited*, the agency recognized the potential for significant environmental impacts, but

determined that, because the situation could be monitored and permits would need to be obtained, an EIS was unnecessary. *Id.* at 909. This court held that future mitigation measures were not a substitute for an EIS. *Id.* But *Trout Unlimited* is factually distinguishable because, in this case, an environmental impact review was conducted under the applicable rules. And although MPUC's order included mitigation plans, MPUC did not use mitigation measures as a substitute for environmental review.

*8 In sum, none of MCEA's arguments establishes a basis to reverse, modify, or remand the MPUC's decision to issue the routing permit and certificate of need for the LSr pipeline. See *Minn.Stat. § 14.69*. Accordingly, summary judgment in MPUC's favor on MCEA's MEPA claims is affirmed.

II.

We next address MCEA's MERA claims. "MERA provides a civil remedy for those that seek to protect ... the air, water, land, and other natural resources within the state" from pollution, impairment, or destruction. *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet County Bd. of County Comm'rs*, 711 N.W.2d 522, 525 (Minn.App.2006), *review denied* (Minn. June 20, 2006). MCEA alleged one MERA count against MPUC and two MERA counts against Enbridge, generally asserting that respondents polluted, impaired, or destroyed a calcareous fen¹ in violation of MERA. MCEA also asserts that Enbridge violated an environmental-quality standard by acting without an approved management plan. See *Minn. R. 8420.0935*, subp. 4 (2007) ("Calcareous fens must not be impacted or otherwise altered or degraded except as provided for in a management plan approved by the commissioner."). MCEA sought declaratory and equitable relief on its MERA claims.

[6] On appeal, MCEA argues that summary judgment was improperly granted because there are genuine issues of material fact regarding its MERA claims. Respondents counter that MCEA's MERA claims are barred under *Minn.Stat. § 216B.27*, subd. 2 (2008). Chapter 216B governs Minnesota public utilities. See *Minn.Stat. §§ 216B.01–82* (2008). *Minn.Stat. § 216B.27* describes the process for reconsideration of MPUC decisions, including the issuance of pipeline routing permits, and states:

The application for a rehearing shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable. No cause of action arising out of any decision constituting an order or determination of the commission or any proceeding for the judicial review thereof shall accrue in any court to any person or corporation unless the plaintiff or petitioner in the action or proceeding within 20 days after the service of the decision, shall have made application to the commission for a rehearing in the proceeding in which the decision was made. No person or corporation shall in any court urge or rely on any ground not so set forth in the application for rehearing.

Minn.Stat. § 216B.27, subd. 2.

MCEA argues that *Minn.Stat. § 216B.27* does not apply to its MERA claims because "[t]hat statute limits the issues that a party may raise in an appeal of a PUC decision made as part of an administrative proceeding." But MCEA cites no authority to support its assertion that the statute applies only to appeals, and the assertion is inconsistent with the plain language of the statute. If the legislature's intent is clearly discernible from a statute's unambiguous language, courts interpret the language according to its plain meaning, without resorting to other principles of statutory construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn.2004). *Section 216B.27*, subd. 2, unambiguously references "[n]o cause of action arising out of any decision" or "any proceeding for the judicial review" of the decision. The plain language of the statute therefore applies both to judicial proceedings to review a decision and to causes of action arising out of the decision. Because this case involves a cause of action arising out of a decision of MPUC, *section 216B.27*, subd. 2, applies.

*9 We therefore consider whether MCEA'S MERA claims against Enbridge are barred under *section 216B.27*, subd. 2. This section precludes a party from bringing a cause of action arising out of an MPUC decision unless that party first raises the ground for the claim in a petition for rehearing

on the decision. The grounds for MCEA's MERA claims against Enbridge are that Enbridge constructed and operates the LSr pipeline through a calcareous fen, thereby causing pollution, impairment and destruction of a natural resource, in the absence of a management plan approved by the DNR. These claims arise from MPUC's decision to authorize the construction of the pipeline in a particular location. Although MCEA petitioned for reconsideration of MPUC's pipeline-routing decision, its petition was based solely on grounds that MPUC issued the routing permit and certificate of need "prior to completion of adequate environmental review for the project" under MEPA. It is undisputed that MCEA did not raise the grounds for its MERA claims against Enbridge in its petition for rehearing. Accordingly, the claims against Enbridge are procedurally barred. *See* [Minn.Stat. § 216B.27](#), subd. 2. Enbridge is therefore entitled to summary judgment on these claims as a matter of law.

Moreover, contrary to MCEA's assertion, Enbridge is not operating the LSr pipeline without an approved management plan. Under Minnesota law, no action may be brought under MERA on the basis of "conduct taken by a person pursuant to any environmental quality standard, limitation, rule, order, license, stipulation agreement or permit issued by the Pollution Control Agency, Department of Natural Resources, Department of Health or Department of Agriculture." [Minn.Stat. § 116B.03](#), subd. 1 (2008); *see also* [Minn. R. 4410.0200 \(2007\)](#) (" 'Permit' means a permit, lease, license, certificate, or other entitlement for use or permission to act that may be granted or issued by a governmental unit..."). The DNR has approved a fen management plan for the affected fen. MCEA's argument that this management plan does not apply to the LSr pipeline is unpersuasive. The plan states: "The following discussion refers to calcareous fen components within the Gully 30 area that have been or will be impacted directly or indirectly by the 2008 installation of the LSr pipeline and the proposed installation of the Alberta Clipper pipeline...." Thus, even if MCEA's MERA claim against Enbridge were not procedurally barred, the claim based on Enbridge's operation of the LSr in the absence of an approved management plan would fail as a matter of law. *See* [Minn.Stat. § 116B.03](#), subd. 1.

[7] We next consider whether MCEA's MERA claim against MPUC is barred under [section 216B.27](#), subd. 2. MCEA asserts that MPUC failed to conduct an adequate environmental review as required by MEPA and as a direct result, granted a routing permit for the construction of the LSr pipeline through a calcareous fen, thereby causing pollution,

impairment, and destruction of a natural resource in violation of MERA. This claim arises out of MPUC's permitting decision. Because MCEA raised the adequacy of MPUC's environmental review in its petition for reconsideration of the permitting decision, the MERA claim is not procedurally barred. *See* [§ 216B.27](#), subd. 2.

*10 [8] But the reason that the MERA claim against MPUC is not procedurally barred is because the claim and MCEA's petition for reconsideration are based on identical grounds: MPUC's alleged failure to conduct adequate environmental review under MEPA. And because MCEA alleges inadequate environmental review as the basis for its MERA claim, the claim entails assessment of MPUC's environmental review. But MEPA, rather than MERA, is the "appropriate vehicle" with which to challenge the adequacy of MPUC's environmental review "where the agency's role is limited only to conducting environmental review of the project at issue." *See Nat'l Audubon Soc. v. Minnesota Pollution Control Agency*, 569 N.W.2d 211, 213, 219 (Minn.App.1997) (concluding that where plaintiffs were challenging an agency's environmental-review decision and the agency's role was limited to conducting the required environmental review of the project, plaintiffs' challenge must be brought under MEPA and not MERA), *review denied* (Minn. Dec. 16, 1997). Accordingly, MCEA may not maintain its claim against MPUC under MERA. *See id.* at 219.

Perhaps MCEA is attempting to avoid the conclusion, compelled by *National Audubon*, that MPUC's alleged inadequate review is not actionable under MERA by asserting that MPUC's inadequate review is "causing" pollution. *See id.* at 218 (explaining that "[b]ecause environmental review cannot result in pollution, impairment, or destruction of the environment ... environmental review does not constitute 'pollution, impairment, or destruction' of the environment as defined by MERA"). But because we have determined that MPUC's environmental review is adequate under MEPA, there is no genuine issue of material fact, and the MERA claim fails as a matter of law. *See Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn.1995) ("A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim."). For these reasons, MPUC is entitled to summary judgment on MCEA's MERA claim.

In conclusion, summary judgment on all of MCEA's MERA claims is appropriate.

Affirmed.

All Citations

Not Reported in N.W.2d, 2010 WL 5071389

Footnotes

- 1 "A calcareous fen is a peat-accumulating wetland dominated by distinct groundwater inflows having specific chemical characteristics. The water is characterized as circumneutral to alkaline, with high concentrations of calcium and low dissolved oxygen content. The chemistry provides an environment for specific and often rare hydrophytic plants." [Minn. R. 8420.0935](#), subp. 2 (2007).

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2007 WL 1470417

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

STATE of Minnesota, by RICE COUNTY LAND USE ACCOUNTABILITY, INC., Appellant,

v.

RICE COUNTY, et al., Respondents.

No. A06-1041.

May 22, 2007.

Rice County District Court, File No. 66-C7-05-002141.

Attorneys and Law Firms

Carol A. Overland, Overland Law Office, Red Wing, MN, for appellant.

Paul D. Reuvers, Jeffrey A. Egge, Iverson Reuvers, Bloomington, MN, for respondents.

Considered and decided by STONEBURNER, Presiding Judge; WILLIS, Judge; and WRIGHT, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge.

*1 Appellant challenges the district court's dismissal of the complaint for failure to state a claim on which relief may be granted, arguing that the allegations are sufficient to establish a prima facie case under the Minnesota Environmental Rights Act (MERA). By notice of review, respondent challenges the district court's denial of respondent's motion for sanctions. We affirm.

FACTS

In June 2005, appellant State of Minnesota, by Rice County Land Use Accountability, Inc. (RCLUA), filed a complaint for declaratory judgment against respondent Rice County,

alleging that Rice County had violated several environmental rules. The complaint sought an order replacing Rice County as the responsible governmental unit for environmental review and mandating Rice County's employees to participate in environmental-review training. Rice County moved to dismiss the complaint for failure to state a claim on which relief may be granted. Minn. R. Civ. P. 12.02(e). The district court granted the motion, holding that RCLUA failed to comply with procedural requirements for filing the complaint. The district court declined to address Rice County's other arguments but warned RCLUA that, "absent a legitimate controversy, [it] has no authority to dictate to an executive body, such as a county board, how it should conduct its business or to scold it if its procedures are alleged to be lacking."

RCLUA filed another complaint in December 2005, again alleging rule violations and seeking the same relief that it sought in the dismissed complaint. RCLUA also seeks an order mandating Rice County to comply with Minnesota's environmental rules and regulations and to review its environmental practices to ensure compliance with those rules and regulations. Rice County moved to dismiss this complaint and to impose sanctions against RCLUA. The district court granted Rice County's motion to dismiss, holding that a case or controversy does not exist because Rice County already is required to follow the law and RCLUA's allegations are not sufficient to establish a prima facie case that Rice County failed to do so. The district court also concluded that, even if RCLUA's complaint sets forth a legally sufficient claim, RCLUA is not entitled to relief under MERA. The district court denied Rice County's motion for sanctions. This appeal followed.

DECISION

I.

We review a dismissal for failure to state a claim on which relief may be granted to determine whether as a matter of law the complaint sets forth a legally sufficient claim for relief. Barton v. Moore, 558 N.W.2d 746, 749 (Minn.1997). In doing so, we accept the facts alleged in the complaint as true and review de novo the legal sufficiency of the claims. Stead-Bowers v. Langley, 636 N.W.2d 334, 338 (Minn.App.2001), review denied (Minn. Feb. 19, 2002).

RCLUA brought its claims under MERA, Minn.Stat. ch. 116B (2006), which authorizes individuals and organizations to seek “declaratory or equitable relief in the name of the state of Minnesota against any person, for the protection of the air, water, land, or other natural resources ... from pollution, impairment, or destruction.” Minn.Stat. § 116B.03, subd. 1. To establish a prima facie case under MERA, the plaintiff must show (1) the existence of a natural resource protectable under MERA,¹ and (2) that defendant's conduct will or is likely to cause pollution, impairment, or destruction of that natural resource. *State by Schaller v. County of Blue Earth*, 563 N.W.2d 260, 264 (Minn.1997). Such conduct causes pollution, impairment, or destruction if it violates or is likely to violate any environmental quality standard, rule, order, or other mandate of the state or its political subdivisions, or if it materially adversely affects or is likely to materially adversely affect a natural resource. Minn.Stat. § 116B.02, subd. 5. Thus, to set forth a legally sufficient claim for relief, a complaint must allege (1) the existence of a protected natural resource, and (2) that defendant's conduct caused pollution, impairment, or destruction of that natural resource because it (a) violated an environmental-quality standard, rule, order, or mandate, or (b) materially adversely affected a natural resource.

*2 Assuming for purposes of our analysis that RCLUA's complaint alleged the existence of a protected natural resource,² we consider whether the complaint's allegations establish a prima facie case that Rice County's conduct caused pollution, impairment, or destruction. The complaint alleges that Rice County violated environmental-review rules codified in chapter 4410 of Minnesota's administrative-agency rules. We have expressly held that environmental review “does not constitute ‘pollution, impairment, or destruction’ of the environment as defined in MERA.” *Nat'l Audubon Soc. v. Minn. Pollution Control Agency*, 569 N.W.2d 211, 218 (Minn.App.1997), review denied (Minn. Dec. 16, 1997).

In *Nat'l Audubon*, appellants brought a MERA claim under Minn.Stat. § 116B.03, subd. 1, alleging that respondent's decision not to order an environmental-impact statement was improper. *Id.* at 214. The district court dismissed the MERA claim under Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief may be granted. *Id.* at 215. On appeal, we held that environmental review is “a process of information gathering and analysis” and, as such, it “cannot result in pollution, impairment, or destruction of the environment.” *Id.* Therefore, “environmental review does

not constitute ‘pollution, impairment, or destruction’ of the environment as defined in MERA.” *Id.* (affirming dismissal of complaint for failure to state claim on which relief may be granted when complaint did not contain legally sufficient allegations regarding second element of MERA prima facie case).

As in *Nat'l Audubon*, all of RCLUA's claims challenge Rice County's environmental-review process. Therefore, as in *Nat'l Audubon*, none of these claims sets forth legally sufficient allegations that Rice County caused pollution, impairment, or destruction of a natural resource. Without such allegations, RCLUA's complaint fails to set forth a legally sufficient claim for relief. Accordingly, the district court properly dismissed RCLUA's complaint for failure to state a claim on which relief may be granted.

II.

Rice County challenges the district court's denial of its motion for sanctions and attorney fees under Minn.Stat. § 549.211 (2006) and Minn. R. Civ. P. 11.03, arguing that sanctions are warranted because RCLUA did not heed the district court's warning in its prior order that it “can only decide actual ‘cases and controversies.’” “We review a district court's decision regarding the imposition of sanctions for an abuse of discretion. *Peterson v. Hinz*, 605 N.W. 2d 414, 417 (Minn.App.2000), review denied (Minn. Apr. 18, 2000); *In re Trust Created by Hill*, 499 N.W.2d 475, 495 (Minn.App.1993), review denied (Minn. July 15, 1993). A finding that counsel proceeded in bad faith is required to award sanctions. *Whalen ex rel. Whalen v. Whalen*, 594 N.W.2d 277, 282 (Minn.App.1999). Sanctions should not be imposed when an attorney has an “objectively reasonable basis for pursuing a factual or legal claim or when a competent attorney could form a reasonable belief that a pleading is well-grounded in fact and law.” *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 787 (Minn.App.2003) (quotation omitted). Based on the record before us, we cannot conclude that RCLUA's counsel proceeded in bad faith such that the district court's decision to deny the motion for sanctions and attorney fees was an abuse of discretion.

*3 Affirmed.

All Citations

Not Reported in N.W.2d, 2007 WL 1470417

Footnotes

- 1 "Natural resources" include, but are not limited to, air, water, and land. [Minn.Stat. § 116B.02, subd. 4.](#)
- 2 Although RCLUA's complaint does not specifically allege that protected natural resources are at risk of pollution, impairment, or destruction, it does identify the natural resources that are the subject of RCLUA's claims, including land, wetlands, and feedlots.

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Exhibit V

Statement of Need and Reasonableness

In the Matter of the Proposed Adoption of Rules Governing
The Siting of Large Wind Energy Conversion Systems

Minnesota Rules chapter 4401

September 20, 2001

**STATE OF MINNESOTA
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

**In the Matter of the Proposed
Adoption of Rules Governing
the Siting of Large Wind Energy
Conversion Systems**

**STATEMENT OF NEED
AND REASONABLENESS**

Minnesota Rules chapter 4401

I. BACKGROUND AND INTRODUCTION

In 1995 the Minnesota Legislature passed a law regulating large wind energy conversion systems. Minnesota Session Laws 1995, chapter 203, codified at Minnesota Statutes sections 116C.691 to 116C.697. The law required that any person seeking to construct a Large Wind Energy Conversion System (LWECS) in Minnesota was required to obtain a Site Permit from the Minnesota Environmental Quality Board.

A wind energy conversion system is a wind turbine or windmill or other device and associated facilities that converts wind energy to electrical energy. A Large Wind Energy Conversion System is a combination of these devices that generates 5,000 kilowatts or more. Minnesota Statutes section 116C.691

The law went into effect on August 1, 1995. At that time the EQB already had an application pending for a large wind energy conversion system, commonly referred to as the Northern States Power Company Phase II Project, a 107.5 megawatt project near Lake Benton, Minnesota. The EQB has successfully applied the new statutory requirements to the project and issued a Site Permit to NSP on October 31, 1995.

In December 1995, the EQB adopted Interim Site Permit Procedures for Large Wind Energy Conversion Systems. These Interim Procedures identified information to be included in a permit application and established procedures for providing the public with opportunities to participate in the permit consideration. The EQB successfully applied the Interim Site Permit Procedures to seven large wind projects since the adoption of the Interim Procedures in 1995.

The Minnesota Environmental Quality Board is proposing to adopt these rules under the statutory provisions relating to adoption of rules without a public hearing. Minnesota Statutes sections 14.22 to 14.28. These statutes allow an agency to adopt rules by giving notice to the public and allowing a period of time for the public to enter comments into the record, but do not require the agency to hold a public hearing. Because the EQB has had extensive experience applying the Interim Site Permit Procedures and issued seven site permits under those Procedures, and because the Procedures form the basis of these

AFCL Exhibit V

proposed rules, the EQB has been able to bring these rules forward in a proven and polished form. Permit applicants and the public have had opportunities to participate in the issuance of site permits under essentially the same requirements and procedures proposed in these rules. Neither permit applicants nor the general public have complained about the manner in which the EQB has administered the site permit program under the Interim Procedures. This should allow these rules to go forward in an expeditious and noncontroversial manner.

Alternative Format

Upon request, this Statement of Need and Reasonableness can be made available in a different format, such as large print, Braille, or cassette tape. To make a request, contact Larry Hartman at the Minnesota Environmental Quality Board, 658 Cedar Street, St. Paul, Minnesota 55155, phone (651) 296-5089, fax (651) 296-3698, or e-mail, larry.hartman@state.mn.us For TTY, contact Minnesota Relay Service at 800-627-3529 and ask for EQB.

II. STATUTORY AUTHORITY

Minnesota Statutes section 116C.695 provides:

The board shall adopt rules governing the consideration of an application for a site permit for an LWECS that address the following:

- (1) criteria that the board shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment;
- (2) procedures that the board will follow in acting on an application for an LWECS;
- (3) procedures for notification to the public of the application and for the conduct of a public information meeting and a public hearing on the proposed LWECS;
- (4) requirements for environmental review of the LWECS;
- (5) conditions in the site permit for turbine type and designs; site layout and construction; and operation and maintenance of the LWECS, including the requirement to restore, to the extent possible, the area affected by construction of the LWECS to the natural conditions that existed immediately before construction of the LWECS;
- (6) revocation or suspension of a site permit when violations of the permit or other requirements occur; and

(7) payment of fees for the necessary and reasonable costs of the board in acting on a permit application and carrying out the requirements of sections 116C.691 to 116C.696.

As is more specifically explained below in the discussion for each individual section of the proposed rules, each of these areas described above is addressed in the rules.

Under this grant of authority, the EQB has the necessary statutory authority to adopt rules for the administration of permit applications for Large Wind Energy Conversion Systems.

Minnesota Statutes section 14.125 – a part of the Administrative Procedure Act that applies to rulemaking – provides that an agency shall publish notice of intent to adopt rules or a notice of hearing within 18 months of the effective date of the authorizing statutes or the rule authority expires. However, this provision does not apply to laws authorizing or requiring rulemaking that were enacted before January 1, 1996, and the statutes at issue here were adopted in 1995.

Because the Interim Site Permit Procedures worked well in issuing LWECS Site Permits, the EQB elected to focus its efforts on the existing and proposed wind projects rather than on the development of a comprehensive set of rules. Thus, it has taken several years to bring this set of permanent rules to rulemaking. However, the experience the EQB has had in issuing these other site permits over the past five years has assisted the EQB greatly in addressing all the matters that are included in the proposed rules.

II. NEED FOR THE RULES

Rules for the administration of site permits for Large Wind Energy Conversion Systems are needed because the EQB is likely to receive a number of permit applications over the next few years and into the future for large wind projects. Wind energy continues to be developed along Buffalo Ridge in southwestern Minnesota, and other areas of the state are likely to see development as well. It is preferable to have in place a comprehensive set of procedures and requirements that have the force and effect of law that can be applied in permitting proceedings for large wind projects. The Legislature declared in 1995 that the policy of the State is to site LWECS in an orderly manner that is compatible with environmental preservation, sustainable development, and the efficient use of resources. These rules are intended to further those legislative goals and policies.

III. COMPLIANCE WITH VARIOUS STATUTORY REQUIREMENTS.

A. SOLICITATION OF OUTSIDE OPINION

Minnesota Statutes section 14.101 requires an agency to solicit public comments on the subject of the proposed rulemaking. On February 12, 2001, the EQB published notice in the *State Register* of its intent to promulgate rules regarding the processing of permit

applications for Large Wind Energy Conversion Systems. 25 State Register 1382 (Feb. 12, 2001). The EQB also published notice in the *EQB Monitor* on February 19, 2001.

The public was given until April 6, 2001, to submit comments in response. The EQB did not receive a single written comment in response to the notice of intent to solicit outside opinion. The EQB also solicited public comments in March 1996 with a notice to that effect in the *State Register*. 20 State Register 2256 (March 11, 1996). No comments on the subject of the rules were submitted at that time either.

B. DISCUSSION OF TOPICS IDENTIFIED IN SECTION 14.131

Minnesota Statutes section 14.131 requires that an agency that is proposing to adopt rules must address a number of factors in the Statement of Need and Reasonableness. The required factors are addressed below:

- (1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The persons who will be primarily affected by these rules are the wind developers. Local governmental officials and the general public and organizations involved in environmental protection are also affected by these rules but not in the same way as the developers. Utilities that purchase electricity generated by wind power can be affected by these rules.

The wind developers will bear the costs of the proposed rules because they are the persons who apply for the permits to construct the Large Wind Energy Conversion Systems. These persons will have to pay fees for the processing of their permit applications. Also, the permit conditions that are imposed in a site permit, such as environmental mitigation and construction limitations and avian mortality and other studies, will also result in costs to the permittee to perform these tasks.

Permittees will also receive a benefit from these rules, however. The rules will inform wind developers what is expected of them in constructing large wind projects. The permit will authorize the permittee to proceed with construction of a wind project in a specific area, effectively precluding other developers from building in that area. The permit may be an effective tool in finalizing financing of a proposed project. The state permit will pre-empt local review of the project and eliminate the need to seek separate permits from a number of local governmental bodies.

Local government will be affected by these rules in the sense that a permit for a LWECs project will determine the location of the facility and the conditions under which the project is to be constructed and operated. Local government will be pre-empted from enforcing its own zoning and other regulations. Minnesota Statutes section 116C.697. Local residents may be impacted by the location of wind turbines near their property. Environmental organizations will be affected because the rules will determine how the

wind resources are developed in an orderly fashion that is protective of the resource and the environment. Utilities that will purchase the electricity generated by wind turbines will be affected through the availability and cost of such power.

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Environmental Quality Board is authorized by statute to charge permit applicants with the necessary and reasonable costs incurred by the EQB in processing the permit application. Minnesota Statutes section 116C.695(7). In addition, the EQB is authorized to make a general assessment against utilities in the state to fund the EQB's work with energy facilities. Minnesota Statutes section 116C.69, subd. 3. None of the expenses incurred by the EQB in either promulgating these rules or in administering permit applications will be paid for out of the general fund. Thus, implementation and enforcement of these rules should have no effect on state revenues.

The EQB estimates that in the next few years one or two permit applications for LWECS projects will be submitted each year. In the past six years since the law went into effect, the EQB has issued seven site permits for LWECS projects. The processing of these applications has cost about \$10,000 per application, although the first permit for the Northern States Power Company's Lake Benton I project was significantly higher, in excess of \$100,000, because it was a highly contested permit with a contested case hearing and an appeal to the Minnesota Court of Appeals by Kenetech Windpower, Inc.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The EQB has operated under Interim Site Permit Procedures for the past five years. These rules are based on those Interim Procedures. Given the fact that neither the wind developers nor the general public have complained about any portions of the Interim Procedures for the past several years, it does not seem that the rules are unreasonably costly or intrusive. The EQB issued two Site Permits for LWECS in the year 2001 – one to Navitas Energy LLC and one to Chanarambie Power Partners LLC. It took about sixty days from acceptance of the application to complete the process and issue the permit, and it cost the applicants approximately \$10,000 each in fees charged by the EQB. The EQB believes that the proposed rules will provide for an expeditious consideration of a permit application with minimal cost to the applicant and ample opportunity for the public to be informed and to participate.

(4) A description of any alternative methods for achieving the purposes of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

In 1995 when the EQB first began implementing the statutory requirement to obtain a site permit for a LWECS, there were several wind developers who were competing for the

best lands along Buffalo Ridge for wind projects. In order to ensure that the best lands were available to the serious wind developers who were likely to proceed expeditiously with their projects, the EQB included in the Interim Site Permit Procedures a mechanism whereby a utility company that had applied to the Public Utilities Commission for a certificate of need for a wind project in a specific area and was directed by law to provide wind power, was entitled to have that area reserved for its development for a period of two years from the time the application was accepted by the PUC. Such a reservation is not included in the proposed rules.

The reason for eliminating this mechanism is because it is no longer necessary. Instead, the proposed rules allow a person to apply for a permit for a specific area, but the authorization to proceed is contingent on the permittee obtaining the wind rights in the area defined in the permit and obtaining a power purchase agreement with somebody who is going to buy the electricity generated. In the last few years it has been private companies, not public utilities, that have been applying for the wind permits. Developers with the wind rights and a commitment to buy the power, along with the financing to fund the project, are going to be able to proceed with their projects without any need to reserve an area in advance.

(5) The probable costs of complying with the proposed rule.

The most readily identifiable costs of the proposed rules are the fees to be charged for processing the permit application. These fees for the seven site permits issued to date have been approximately \$10,000 per permit proceeding, except for the first permit the EQB issued to Northern States Power Company in 1995. Unless a project is controversial for some reason, and a contested case hearing is required on the application, costs for processing a permit application should continue to be in the \$10,000 range.

Permittees, of course, will also incur costs in complying with the conditions imposed in the permit. Wind turbines can cost more than a million dollars apiece, so the costs of complying with permit conditions has not been a major factor for wind developers as far as the EQB knows. The avian mortality study that Northern States Power Company was ordered to perform in 1995 cost about \$500,000 to complete. That cost, however, is being shared proportionately by all wind developers who obtain permits from the EQB through 2002, depending on the megawatts of installed capacity permitted.

(6) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

This statutory requirement is primarily designed to address the situation where a proposed state rule is more stringent than a corresponding federal requirement. In this case, there is no corresponding federal regulation. Chapter 4401 applies to state permitting requirements for Large Wind Energy Conversion Systems. The federal government does not require such a permit for wind projects. The federal government could require approval for a wind project in certain circumstances, such as the case where

the wind turbines are near an airport or located on federal lands. However, the federal government does not require a permit for a wind project per se.

C. Performance-Based Analysis-Minnesota Statutes Section 14.002.

Minnesota Statutes section 14.002 requires an agency that is developing rules to describe in the Statement of Need and Reasonableness how it considered ways it might afford flexibility in complying with the regulatory requirements being proposed while still meeting the agency's objectives. Here, what the EQB tried to do was to minimize the burden on what must be submitted as part of a permit application, yet ensure that environmental and energy considerations are addressed, and to expedite the process, yet provide ample opportunity for public input.

An example of how the EQB provided flexibility is in part 4401.0450, subpart 2, where the proposed language gives a permit applicant the right to go ahead with the permit application even if the applicant does not have a power purchase agreement for the power that will be generated. Another example is in subpart 5 of the same part, where an applicant's lack of wind rights will not hold up processing a permit application, even though without the wind rights the proposer will not be able to build the project.

In order to provide information to the public, and yet keep the process moving, the proposed rules provide that upon acceptance of an application, the chair of the board will make a preliminary decision on whether a permit may be issued and prepare a draft site permit if the decision is to approve a permit. This draft site permit will quickly identify for the public and the applicant any areas of contention. In the end, the existence of a draft site permit should provide for an expeditious final decision.

Throughout development of the proposed rules, the EQB was cognizant of the desire by applicants to minimize the burden of applying for a permit and to provide for an expeditious final decision. The EQB also considered that the public wants to be informed about proposed projects and to have an opportunity to participate in the decisionmaking process. The EQB believes that these rules will result in an open, informed, expeditious permitting process. The statute gives the EQB 180 days from the time an application is accepted to reach a final decision. Minnesota Statutes section 116C.694(c).

All interested persons are encouraged to submit comments on any parts of the rules. If there are other instances where additional flexibility is possible, the EQB will certainly consider such suggestions.

D. NOTICE TO COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE

Minnesota Statutes section 14.111 provides that before an agency may adopt rules that affect farming operations, the agency must provide a copy of the proposed rules to the Commissioner of the Department of Agriculture at least 30 days before publishing notice in the *State Register*. In this case, these proposed rules will not directly regulate farming operations, and this notice is probably not required. However, because the wind projects

to be permitted under these rules will likely be located on farm land, farming operations can be impacted when the wind turbines are constructed, and it is appropriate to notify the Commissioner.

Presently, the Commissioner of the Department of Agriculture, Gene Hugoson, is the chair of the Environmental Quality Board. Commissioner Hugoson has, of course, been advised of the possible adoption of these rules. This statutory requirement has been complied with.

E. ADDITIONAL NOTICE GIVEN TO THE PUBLIC

Minnesota Statutes section 14.23 requires an agency to describe in the Statement of Need and Reasonableness the efforts the agency made to notify persons or classes of persons who might be affected by the proposed rules about the proposed rulemaking. In addition to the statutory requirements to publish notice in the State Register and to mail notice to persons on the EQB rulemaking list, the EQB will also undertake other efforts to notify the public about these proposed rules.

The EQB will publish notice in the *EQB Monitor* of the proposed rulemaking. Each issue of the *EQB Monitor* is distributed to a lengthy list of persons and published on the EQB webpage. Many groups and individuals in Minnesota and elsewhere who are active and interested in environmental matters in the state are aware of the *EQB Monitor* and read it regularly.

In addition, the EQB will post a copy of the notice, the proposed rules, and this Statement of Need and Reasonableness directly on the internet. The EQB homepage contains an entry identifying the new items that have been recently posted by the EQB. When this material is first posted, the public will also see an entry highlighting the fact that this material is now available on the web.

The EQB has also over the past six years or so compiled a list of several hundred names of people who are known to the agency to be interested in wind development and new wind projects. The list includes names of wind developers, utility companies, local government officials, and the general public. The EQB will mail notice directly to the persons on this list, either by postal mail or by electronic mail.

Finally, the EQB will publish notice of the proposed rulemaking in local newspapers in southwestern Minnesota, where most of the wind development has occurred in the state. These will be the same newspapers that have been used in the past to provide notice about permit applications for specific projects.

V. RULE-BY-RULE ANALYSIS

This part of the SONAR is a rule-by-rule discussion of the reasons why the rule is being proposed. In a number of places, the EQB identifies documents that provide information that supports the proposed language

4401.0100 PURPOSE.

This part is simply a recitation of what chapter 4401 is intended to do and repeats the statutory policy regarding the orderly development of the wind resource in Minnesota. Minnesota Statutes section 116C.693. There are no substantive requirements in this part.

4401.0200 Definitions.

Subpart 1. Scope. This provision simply states that the terms defined in the rule are for purposes of chapter 4401.

Subpart 2. Associated Facilities. The term associated facilities is used in the statutory definition of “wind energy conversion system” but the Legislature did not define the term. It is helpful to provide a definition because an LWECS consists of not only the wind turbines, but also other associated facilities. Under the law even the associated facilities require a permit before construction is authorized.

The EQB proposes to define “associated facilities” as those “facilities, equipment, machinery, and other devices necessary to the proper operation and maintenance of a large wind energy conversion system, including access roads, collector and feeder lines, and substations.” This is simply a common sense definition. When permitting a LWECS, the EQB must not only identify the wind turbines to be included in the project, but also the other facilities and equipment that are necessary to make the wind turbines functional.

While it is not possible to identify specifically what facilities and equipment are included within the definition of “associated facilities” for every LWECS that might be proposed, there are some facilities that are certainly within the definition. The proposed definition lists access roads, collector and feeder lines, and substations as examples of “associated facilities.” These are the kind of facilities that have been included in other permitted projects as associated facilities. Surely, the electrical connections required to convey the electricity from the wind turbine to the transmission grid are associated facilities. Also, facilities necessary to transport the turbines and towers and other equipment to the site, like access roads, are the kind of activities that impact the environment and should be evaluated as part of the permit process. These roads are also necessary to maintain the turbines after they are up and running.

Other kinds of facilities and equipment and machinery that are necessary to the project will be determined during the permit process. The permittee can identify these facilities that are necessary to operation and maintenance of the LWECS. The reference to “necessary” facilities is specific enough to allow the applicant and the EQB to determine what is included within the definition.

Subpart 3. Board. The Minnesota Environmental Quality Board is sometimes simply referred to as the “board” in the rules for clarity and simplicity. The board is

comprised of the commissioners and directors of the state agencies that are members of the MEQB and the private citizens appointed by the Governor. Minnesota Statutes section 116C.03, subdivision 2. The board is the entity that makes the final decisions on permits and other matters.

Subpart 4. Chair. The “chair” is the person appointed by the Governor to serve as the chair of the board. There are several tasks identified in the rules for the chair of the Board to perform. As is explained below for specific rule language, it is reasonable to assign certain duties to the chair to ensure that the process moves expeditiously to a decision by the board. Since the board meets only once a month, it would slow down the process if every matter had to be brought to the board.

Subpart 5. Construction. The EQB does not want project proposers to begin construction of their proposed projects until after a permit has been issued. Part 4401.0300 provides that it is against the law to commence construction of an LWECs until the board has issued a site permit. The reason for prohibiting construction until the permit is issued is so that the applicant will not engage in conduct that irreversibly impairs the environment or make financial commitments that will make it difficult for the EQB to openly evaluate the project. It is common practice for permitting agencies to insist that projects not begin until a decision on the permit has been made. See, for example, the Minnesota Pollution Control Agency’s rules for water permits. Minnesota Rules part 7001.1020, subpart 8.

The question, of course, is what does it mean to commence construction. The kinds of commitments and activities described in the proposed rule – starting a continuous program of construction or site preparation - are the kinds of commitments and activities that would make it difficult for the EQB to deliberate to the extent it must on a permit request and to decide on the permit in accordance with the requirements of the law. These kind of efforts not only put pressure on the EQB to allow the conduct to go forward, but they can result in damage to the environment that could have and should have been avoided.

The proposed definition does not prohibit entering into power purchase agreements and obtaining wind rights from property owners and gathering wind data prior to obtaining a permit. Obviously, these kinds of tasks can be completed without impacting the permit process or the environment. Indeed, the EQB wants developers to negotiate and enter into power purchase agreements with utilities and negotiate and obtain wind rights from property owners. Certainly there is no objection to gathering wind data without applying for and obtaining a permit.

Nor does the rule make any mention of restricting the right to enter into contractual commitments related to the wind project. The EQB considered limiting the ability of a permit applicant to make binding contractual agreements to purchase facilities or equipment in advance of receiving a permit, but wind developers must be able to arrange for delivery of the turbines well in advance of applying for and receiving a permit from the EQB.

Subpart 6. Draft site permit. The draft site permit is a document that represents a preliminary decision by the chair that a site permit can be issued for the project. The draft site permit contains terms and conditions that the chair has determined might be appropriate to include in the final site permit. The draft site permit will assist the applicant and the public in understanding the issues associated with the proposed project

Subpart 7. EQB. This is the definition of the agency itself, including both the Board and the staff. Whenever it is the chair or the board that is responsible for performing a task or making a decision, the rules specify that. But in many instances it is the staff that will actually carry out certain tasks, and it is necessary to recognize that distinction. For example, it is the staff that will arrange for the publication of certain notices and maintain the accounting of the costs. In those instances in the rules where agency staff may perform the task, the rules spell out EQB, rather than the Board or the Chair.

Subpart 8. EQB Monitor. The *EQB Monitor* is a bulletin published by the EQB every other Monday. The *EQB Monitor* has been published by the EQB since 1977. The *EQB Monitor* is distributed widely to interested persons, and it is published on the web.

<http://www.mnplan.state.mn.us/eqb/monitor.html>

The public has come to expect notices of EQB matters to be published in the *EQB Monitor*, and there are several references in the rules to publication in the *EQB Monitor*.

Subpart 9. Large wind energy conversion system or LWECS. This definition is the statutory definition in Minnesota Statutes section 116C.691, subdivision 2.

Subpart 10. Person. Person needs to be defined broadly to include more than just individual human beings. The definition here is the same definition used in the Power Plant Siting Rules. Minnesota Rules part 4400.0200, subp. 12.

Subpart 11. Power Purchase Agreement. Individuals and corporations and other organizations that are not in the utility business are often the persons who propose large wind energy projects. These wind developers intend to sell the power generated to utilities like Xcel Energy and Great River Energy, who will then deliver the electricity to the ultimate consumers. Since the developers do not have their own transmission facilities, they need an agreement with the utilities to purchase the power to be generated. This definition defines power purchase agreement to be any kind of enforceable agreement between the developer and the utility for purchase of the wind power.

Subpart 12. Site Permit. The Site Permit is the document that the board issues at the completion of the process that authorizes the applicant to proceed with construction of the project under the terms and conditions contained in the permit.

Subpart 13. Small Wind Energy Conversion System or SWECS. This definition is identical to the statutory definition. Minnesota Statutes section 116C.691, subdivision 3. Every wind energy conversion system is either a SWECS or a LWECS but the EQB has jurisdiction only over the LWECS.

Subpart 14. Wind Energy Conversion System or WECS. This definition is identical to the statutory definition as well. Minnesota Statutes section 116C.691, subdivision 4. The Legislature intended in the statute and the EQB intends in the rule to promulgate a broad definition that will encompass any kind of device that captures the wind to use for the generation of electric energy.

4401.0300 PERMIT REQUIREMENT

Subpart 1. LWECS. This rule is simply a reiteration of the statutory mandate that a permit is required to construct a Large Wind Energy Conversion System. The rule also requires that the permit must be obtained before construction of the system can commence. Since the term “construction” is defined in part 4401.0200, subpart 5, there should be no confusion on the part of developers what is allowed to happen before the permit is issued. The explanation for the definition is included in the discussion for that subpart.

Subpart 2. SWECS. The Legislature provided that a Site Permit from the EQB is not required to construct a wind project of less than 5 megawatts and this rule recognizes that limitation. The EQB has no jurisdiction over SWECS, and the second sentence of this rule recognizes that local units of government are responsible for regulating the small wind projects. No state environmental review is required of an electric generating facility of less than five megawatts. Minnesota Rules part 4410.4600, subpart 3.

Subpart 3. Expansion of Existing System. The purpose of this provision is to require EQB review and approval before an existing LWECS is expanded by any amount or before an existing SWECS is expanded by an amount that allows the SWECS to generate more than 5 megawatts of electricity. Since the Legislature required any project over 5 megawatts to undergo state review, it makes sense to give the EQB an opportunity to analyze any expansion of an existing project when more than 5 megawatts of power are involved. The EQB wants to avoid the situation where several small projects are constructed without state review when in reality the projects are essentially one large project that requires an EQB permit.

The test proposed in the EQB rule for determining whether several small projects are really a large project is taken from the statutory language passed by the Legislature in the Energy Security and Reliability Act of 2001. Minnesota Session Laws 2001, chapter 212, article 5, section 2. In the 2001 legislative session, the Minnesota Legislature addressed this issue in terms of the incentive payment that is available to developers of small wind energy projects under two megawatts. Minnesota Statutes section 216C.41. The incentive payment is 1.5 cents per kilowatt-hour for qualifying facilities. The

Legislature was concerned that developers might attempt to skirt the limitations of the incentive payment provision by proposing several small wind projects, none of which exceeds two megawatts alone but which in total exceed that number, by proposing each project under a different name. In that way a developer might seek an incentive payment for several small projects that in reality are one large project in excess of the qualifying amount.

The language passed by the Legislature reads as follows:

(b) Beginning January 1, 2002, the total size of a wind energy conversion system under this section [216C.41] must be determined according to this paragraph. Unless the systems are interconnected with different distribution systems, the nameplate capacity of one wind energy conversion system must be combined with the nameplate capacity of any other wind energy conversion system that is:

- (1) located within five miles of the wind energy conversion system;
- (2) constructed within the same calendar year as the wind energy conversion system; and
- (3) under common ownership.

In the case of a dispute, the commissioner of commerce shall determine the total size of the system, and shall draw all reasonable inferences in favor of combining the system.

(c) In making a determination under paragraph (b), the commissioner of commerce may determine that two wind energy conversion systems are under common ownership when the underlying ownership structure contains similar persons or entities, even if the ownership shares differ between the two systems. Wind energy conversion systems are not under common ownership solely because the same person or entity provided equity financing for the systems.

Minnesota Statutes section 216C.41, subd. 5, as amended by Minnesota Laws 2001, ch. 212, art. 5, section 2.

The language in the proposed rule is essentially the same as the statutory language. The test applied by the Commissioner of the Department of Commerce for incentive payment purposes will be the same test applied by the EQB for permitting purposes. The Commissioner of Commerce is a member of the EQB Board and there will be cooperation between Commerce and the EQB in resolving whether two or more small projects are really one larger project.

4401.0400. FILING OF APPLICATION FOR SITE PERMIT.

Subpart 1. Number of Copies. The rule requires an applicant to file three copies of the application with the EQB. The reason three copies are required is so that the Chair can have a copy and the staff can have two. It is reasonable to require the applicant to provide enough copies to allow the staff and the Chair to conduct their review of the adequacy of the application. As is explained later, once the application is accepted the applicant will have to submit additional copies so the EQB can provide copies to all those persons who normally receive such documents.

Subpart 2. Electronic Copy. The EQB has been putting more and more information on its web page. The public has come to expect to find information about matters pending before all state agencies on the web. It is a convenient and inexpensive way to provide information to the public. In order to put the application on the web, the applicant must provide an electronic version of the document. The rule recognizes that an applicant can ask for a waiver of the requirement to provide an electronic copy, but it is hard to imagine in today's computer world that an electronic version is not available. Perhaps certain maps or photographs may not be available but even that situation should not arise often.

Subpart 3. Proprietary information. The purpose of this subpart is simply to recognize that on occasion an applicant may provide information as part of an application that is protected from public disclosure by Minnesota law. The most likely statute providing such protection is the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13, and the most likely classification is trade secret information. Minnesota Statutes section 13.37(b). However, an applicant may have other reasons to protect certain information and may certainly rely on those.

The issue over public inspection of information in wind project applications has not been a problem in the past, but the rule nonetheless creates a mechanism for handling a request by an applicant to protect certain information from public disclosure. The request will be brought to the full Board for a determination of whether the information actually qualifies for the classification. If the Board disagrees with the applicant, and is of the view that the information is public information, the applicant can either allow the public to inspect the information, withdraw the application, or challenge the Board's decision in court. In any event, information that an applicant believes is not open for public review will not be made available to the public without affording the applicant an opportunity to establish that the information is protected.

4401.0450 CONTENTS OF SITE PERMIT APPLICATION.

Subpart 1. Applicant. This subpart requires the applicant to provide basic background information about the person or persons applying for the LWECs Site Permit. This same kind of information is required from applicants for other kinds of energy facilities permitted by the MEQB. See Minnesota Rules parts 4400.0600 (transmission lines), 4400.2600 (power plants), and 4415.0115 (pipelines). This kind of

information is necessary to ascertain who the permittee or permittees should be and also to provide contact persons for purposes of mailing notices and asking questions.

Item A. A letter of transmittal from an authorized representative or agent of the applicant is simply a means of submitting the application.

Item B. Providing the complete name, address, and telephone number of the applicant and authorized representatives ensures that the EQB staff can contact the right people if questions should arise. This is especially important when the application is first filed with the EQB if the staff has not had much prior contact with the applicant and learned the names of the appropriate people with knowledge about the project.

Item C. Asking for the signature of the preparer of the application is certainly a reasonable request. The preparer of the application is usually the person who is most knowledgeable about the project, or at least knows who to talk to about a particular matter. Applicants often use consultants to prepare and submit their applications. It is helpful to know who the consultant is so that questions may be directed to the consultant to clarify data or information in the application and to arrange for the transfer of an electronic version of the application.

Item D. The EQB wants to know whether the applicant is actually the person who will construct and operate the LWECS. It is important to determine the appropriate persons to name as permittees on the permit and to ensure that any conditions included in the permit will be complied with. The public usually wants to know the names of all persons involved with a proposed project. For example, in one application proceeding Northern States Power Company was the applicant, Zond, Inc. was the builder, and the permittee was Lake Benton Power Partners, LLC.

Item E. Asking the applicant to identify any other wind projects in which the applicant has an ownership or other financial interest will allow the EQB to determine whether a particular project is part of any other wind projects. It will also allow the EQB to consider the applicant's performance regarding these other projects and evaluate the applicant's ability to comply with permit conditions.

Item F. As with item D, the EQB wants to ensure that the proper persons are named as permittees. If the operator of the LWECS is required to ensure compliance with certain operating conditions, the EQB wants to know who that person is who will be performing certain operational tasks.

Item G. This last item simply asks the applicant to identify who should be named as permittees on the permit. It has been the EQB's experience that oftentimes a wind developer will incorporate a new organization for purposes of a particular project. The EQB needs to know the precise name of the applicants, and whether they are individuals, corporations, limited liability partnerships, or other organization. Asking the applicant to identify the precise names and structure of the permittees is the best way to ensure that the correct names are used.

Subpart 2. Certificate of need or other commitment.

Item A. A certificate of need is a document issued by the Minnesota Public Utilities Commission. Minnesota Statutes section 216B.243, as amended by Minnesota Laws 2001, chapter 212, art. 7, sec. 33. A certificate of need is required for any power plant over 50 megawatts. Minnesota Statutes section 216B.2421, subd. 2(a), as amended by chapter 212, art. 7, sec. 29.

If a certificate of need is required, the applicant should file that application with the PUC prior to filing a site permit application with the MEQB. See Minnesota Statutes section 216B.243, subd. 4, as amended by chapter 212, art. 7, sec. 32. The applicant can file a permit application with the EQB before the PUC makes a decision on the certificate of need, but the EQB cannot issue a permit until a certificate of need is issued. Minnesota Statutes section 216B.243, subd. 2. Because the siting process will take less time to complete than the certificate of need process, the board can process the site permit but not make a final decision on the site permit until a certificate of need has been granted. The need and siting decisions for other energy facilities are made in the same sequence.

Item B. This provision recognizes that the Board may ask the PUC to determine if a certificate of need is required for a particular project. Because wind turbines are modular in nature, additional turbines may be added to a project at almost anytime. If, for example, a 45 MW project is built (for which a certificate of need is not required because it is under 50 MW), and the developer later proposes to add another 10 MW, it may be appropriate for the PUC to determine if a certificate of need is required.

Item C. This provision addresses those wind projects for which a certificate of need is not required because the LWECS is under 50 megawatts. In the absence of a need decision, the board wants to know what the applicant intends to do with the power that is generated. The board does not want to issue a site permit for a project that may not be built.

The board explained the reasons for requiring a power purchase agreement in two recent wind permit proceedings. The EQB in May 2001 issued permits to two developers for projects for which they did not have a power purchase agreement. One permit was for Navitas Energy, LLC, and the other was for Chanarambie Power Partners, LLC. for projects in Murray and Pipestone Counties. In both cases, the permittee had not finalized a power purchase agreement, at least not for all the power it intended to generate. The EQB issued both permits but conditioned them on the requirement that the permittee obtain a power purchase agreement within a specified time. The EQB made a specific finding regarding this issue in those permit proceedings, which reads as follows: “The purpose of the requirement for a power purchase agreement was to ensure that a developer did not tie up a large area of land for wind generation when the project was not likely to go forward in a timely fashion.” Finding No. 44, Navitas Energy, LLC.

The rule provides that the chair may request the applicant to submit a copy of the power purchase agreement or other document confirming the sale of the power. It is reasonable to recognize that the EQB can insist on confirmation that a power purchase agreement or other enforceable arrangement exists for sale of the power. However, the power purchase agreement is sometimes a confidential document, and the EQB has not in the past required the entire document to be submitted. The EQB may not need to know the terms of the sale, or the price, or other matters, for example, but only that an enforceable agreement exists. In such event, the EQB can request that only certain parts of the agreement be submitted.

While it is reasonable to expect a wind developer to tell the EQB what it intends to do with the power it plans to generate, the lack of a power purchase agreement does not necessarily mean that the permit will be delayed or denied. Both the Navitas permit and the Chanarambie permit were conditioned on the permittee obtaining a power purchase agreement within a relatively short period of time, and the permittees were not allowed to proceed with construction until they obtained a power purchase agreement. This is a reasonable solution to the situation where a developer wants to get a project approved but has not finalized the purchase arrangement yet, and this approach is continued in the rules.

Subpart 3. State policy. This part requires the applicant to describe in the application how the LWECS project will comport with a state policy that provides for environmental preservation, sustainable development and efficient use of resources. Minnesota Statutes section 116C.693. This part is significant in that it expresses the state policy and provides the applicant an opportunity to demonstrate how the LWECS project addresses these general policy areas. The applicant's discussion of this may also provide the Board with additional knowledge about development of the wind resource that may be helpful in the review and permitting of the LWECS project.

Subpart 4. Proposed site. This provision requires the applicant to submit basic information about the proposed site.

Item A. The boundaries of the project must be identified with some specificity so the EQB can determine whether the project interferes with any other existing or proposed wind projects. Applicants for existing projects have not had difficulty in the past in providing the EQB with United States Geological Survey (USGS) maps or other maps showing the boundaries of the project. The EQB will specifically identify the boundaries of the project in any permit that is issued, so the applicant must specify the area for which approval is being sought.

Item B. The EQB wants to know the characteristics of the wind within the proposed project boundaries. In order to ensure the orderly and efficient use of the wind resource, as directed to do by the Legislature, it is important to know the quality of the wind in the area to be developed.

The information required under this item is the kind of information developers have to gather to determine whether a proposed location has the kind of winds that are required for a successful wind project. The ten characteristics identified in this rule provide information on the speed of the wind, the seasonal variation in the wind, the frequency of the wind, wind direction, height of the wind above grade, and other criteria that are important in siting the location of wind turbines. Developers are not going to propose a project unless they have gathered this kind of information about the wind. It has not been a problem with past permits for applicants to provide the information requested here.

Item C. Since other meteorological conditions like rainfall and snowfall and temperature can affect the amount of electricity generated by wind turbines, it is reasonable to request an applicant to supply this kind of information. Again, any applicant for a wind project costing millions of dollars is going to have this kind of information available.

Item D. The reason for identifying the location of other wind turbines in the general area of the proposed LWECS is to ensure that one project does not interfere with another. If turbines are sited too close together, a downwind turbine can experience what's called wake loss. Wake loss results when the wind is sent into a turbulent state after encountering a turbine. If a turbine is located too close downwind, usually within ten rotor diameters of the upwind turbine, the wind will not have had a chance to recover to its normal state, and the turbulence will result in less efficient generation of electricity at the second turbine. Because the EQB wants to ensure efficient use of the wind resource, it is preferable to avoid wake loss to the extent possible. By taking into account existing turbines, the EQB can evaluate the potential for wake loss with a proposed project.

Subpart 5. Wind rights. In order to construct wind turbines in a particular location, the permittee must have the right to place the turbines on the land in the desired location. Wind developers have negotiated easements and other agreements with many landowners along Buffalo Ridge in southwest Minnesota and in other areas of the state with potential wind resources. It is reasonable and appropriate to expect a permit applicant to describe what wind rights the applicant holds within the proposed boundary of the project. The manner in which the EQB will address the issue of wind rights with particular projects is discussed under part 4401.0610, subpart 1.

Subpart 6. Design of project. This rule requires an applicant to provide some detail about the project being proposed. This information is required so the EQB can know specifically what is being proposed, evaluate the project and identify any problem areas, and determine necessary conditions for any permit that is issued.

Item A. The applicant must identify how many turbines the project will include and where the applicant intends to install those turbines. Identification of turbine location is necessary for all kinds of reasons, everything from environmental impacts to wake loss. The EQB understands, however, that at the time the application is submitted, the applicant can only estimate where the turbines will be located, because micrositing

occurs after the permit is issued and construction is about to begin. The permit does not preclude the permittee from moving the location of particular turbines from what was anticipated, as long as other various restrictions of the permit are complied with, such as setback requirements and restrictions on placing turbines in areas like wetlands. Typically, a site permit for a wind project contains a condition requiring the permittee to inform the EQB of the precise locations of the turbines when the micrositing is complete.

Item B. The EQB needs to know the specifics of the turbines that will be installed – the height, the structure, the blade diameter, and other data. This information is necessary to evaluate the possible impacts of the project on the environment and to consider the energy production expected.

Items C and D. The wind turbines are only a part of any LWECS. A wind project also involves all kinds of electrical equipment, like transformers and collection and feeder lines, and other equipment like maintenance and operational equipment. In order to evaluate the complete impact of a proposed project, these associated facilities must also be identified. It is appropriate to require the applicant to identify what additional facilities are associated with the particular project being proposed. In addition, this will ensure that any permit that is issued will be written to cover everything that is associated with the project.

Subpart 7. Environmental impacts. Of course, the EQB must investigate and review the environmental impacts associated with any proposed wind project. The applicant is the one that must provide the information about the potential impacts of the project. What this rule requires is the inclusion in the application of information on the potential impacts of the project, the mitigative measures that are possible, and adverse environmental effects that cannot be avoided. This is the typical analysis with any project undergoing environmental review by the EQB or other agencies.

The effects identified in items A – R in the rule should cover every potential impact of a LWECS. It is not necessary to discuss every single one of these in this Statement of Need and Reasonableness. Suffice it to say that an applicant must identify any and all potentially adverse impacts that may be caused by a proposed project and mitigative measures that might be implemented with regard to those impacts.

Wind projects have not been found to have significant environmental and human impacts. Wind projects along Buffalo Ridge have been generally well accepted by residents and others concerned about the environment. Permit conditions have been satisfactory to address specific concerns like wetlands and wildlife management areas with past permits. One area of concern that was raised initially was the possibility of avian fatalities caused by the turbines.

As part of the first wind permit issued by the EQB, the Board required Northern States Power Company to conduct an avian mortality study along Buffalo Ridge. This study was conducted between 1995 and 2000, and a report on the study was completed in 2000. The researchers found that the number of avian fatalities from the wind turbines at

Buffalo Ridge is essentially inconsequential, although there was some bat mortality found. The wind developers are presently conducting additional studies on bat mortality.

Because the environmental and human consequences of wind turbines are relatively minor and can be minimized by appropriate permit conditions, the EQB is not requiring in these rules that an Environmental Assessment Worksheet or an Environmental Impact Statement be prepared on a proposed LWECS. It is sufficient that the environmental impacts and mitigative measures be discussed in the application itself. If an issue of concern were to be raised specific to a particular wind project, the EQB could ask for additional examination of those impacts and could address the concern through permit conditions or by moving some of the turbines

Subpart 8. Construction of project. Construction itself can cause environmental impacts, so it is necessary for the applicant to address the manner in which the project will be constructed. It may be necessary to include conditions in the permit requiring mitigative measures during construction of the turbines.

Subpart 9. Operation of project. Once the wind turbines are up and running, they must be operated and maintained. The applicant must describe its operation and maintenance procedures so any impacts associated with those tasks can be identified and addressed.

Subpart 10. Costs. The EQB uses the cost information to evaluate whether the project is making efficient use of the wind resource. Also, cost information is important to place in perspective the costs of mitigating any environmental impacts that are identified.

Subpart 11. Schedule. The EQB wants to know at the time the application is submitted what the developer's proposed schedule is. The EQB understands that sometimes schedules slip, but at least the applicant can provide an anticipated schedule. The rule requires the applicant to describe the anticipated schedule for a number of tasks, including obtaining the permit, acquiring land, obtaining financing, procuring equipment, and completing construction. This information will give the EQB a good overall view of the tasks required to be completed to actually bring the project online, and help identify any constraints in the schedule. The expected date of commercial operation is helpful to the EQB and to other state agencies as well. The public, also, is interested in the anticipated schedule for construction of the project.

Subpart 12. Energy projections. The EQB has been collecting data on how well the wind turbines in the state have been performing. At the time the application is submitted, the applicant can only make projections on the energy to be generated, but it is helpful to know what the developer expects to receive from the turbines planned for installation.

Subpart 13. Decommissioning and restoration. Just like any other project, a LWECS will not last forever. At some point the wind turbines and other associated

facilities will have to be decommissioned. The EQB wants to know upfront how the developer plans to pay for removal of the turbines at the end of their useful life. Since the wind turbines may last for thirty years or more, and the ownership of the project may change over the years, some arrangements must be made from the start to provide funding for the ultimate decommissioning. In other cases wind developers have created funds specially set aside for this purpose, and the funding comes from payments made periodically from sale of the electricity. The EQB is not promulgating one specific requirement for ensuring funds are available for decommissioning, and the EQB will allow applicants to be creative provided the EQB can be assured the money will be there when needed.

Subpart 14. Identification of other permits. It is not unusual with any project requiring a permit that the applicant identify what other permits are required before the project can go ahead. These permits are normally such permits as a Department of Natural Resources water crossing permit or a wetland survey and a Pollution Control Agency surface water discharge permit. Sometimes federal approval may be required, depending on the location of the project. For example, approval from the Federal Aviation Administration (FAA) may be required if an airport is nearby, or approval from the Bureau of Land Management could be necessary if the project were to be located on federal lands. Local government is pre-empted from enforcing its zoning and land use ordinances when the EQB has jurisdiction over a project. Minnesota Statutes section 116C.697.

4401.0460 ACCEPTANCE OF APPLICATION.

Sections 4401.0460 through 4401.0550 establish the procedures the EQB will follow in acting on an application for a site permit for a LWECs. The Legislature specifically directed the EQB to adopt rules establishing such procedures. Minnesota Statutes section 116C.695(2).

Subpart 1. Action by chair. The chair has thirty days under this requirement to accept or reject an application once it is submitted to the EQB. The statute specifically provides that it is the chair who decides on the completeness of the application. Minnesota Statutes section 116C.694(c). Allowing the chair to make this decision, rather than the board, will help to speed the process along. Ultimately, of course, it is the full board that will decide whether to issue a permit and what conditions to include.

The chair has thirty days from the day the application is submitted to make a decision on the completeness of the application. Acceptance of the application also triggers the start of the 180 days the EQB has to act on the application. Minnesota Statutes section 116C.694(c). Normally, wind developers have been in contact with the staff prior to submission of an application and have allowed the staff to comment on draft applications. Thus, when the application is submitted in final form, it contains the information the staff believes is necessary and is quickly accepted. If the chair should reject an application, the rule requires the chair to identify in writing the deficiencies that exist and how the application can be corrected.

Subpart 2. Notice of application acceptance. It is important that notice be provided quickly to persons who are likely to be interested in the fact that a wind permit has been applied for. This subpart requires the applicant to notify local officials and to publish notice in a newspaper of general circulation in each county in which the project is proposed to be located within fifteen days after acceptance of the application. Fifteen days is a reasonable period of time. There is no reason notice can't be published in the newspaper within a few days or a week after acceptance of the application.

This subpart provides that failure to give this notice or a delay in giving the notice could result in the permit being denied or a decision being delayed. It is appropriate to provide that these kind of sanctions could be imposed because the EQB has only 180 days to act on a permit application once the application is accepted, and it is important to give the public ample opportunity to respond to the proposal.

However, it is unlikely that such sanctions would be imposed. In most instances, the public will have already been informed about the possibility of a wind project in their vicinity by the time the application is submitted to the EQB, since usually the word about a proposed project is in the news locally before a permit is even applied for. Also, the subpart provides that the chair may elect to relieve the applicant of giving this notice. The reason for this is oftentimes the EQB is prepared to give the notice specified in part 4401.0550, subpart 1, at the same time the applicant is required to give notice under this subpart. In such situations, it makes sense to combine the notice to provide all the information specified in 4401.0550. Further, the EQB will post the application on its web page as soon as possible after the application is accepted, and the use of the internet helps provide notice very quickly.

Subpart 3. Additional copies. The purpose of this subpart is to ensure that a hard copy of the application is available in the area where the project is proposed to be located. The rule requires the applicant to provide a copy to the cities, townships, and counties where the project is located. These local governmental offices are a convenient place for residents in the area to come to review a hard copy. The rule directs local officials to make the application available for public inspection. The EQB has found local officials more than willing to perform this task in the past.

The applicant also must provide a hard copy to the Minnesota Public Utilities Commission and the Minnesota Historical Society. The PUC is interested in all wind projects because the PUC may have evaluated the project as part of a certificate of need proceeding or may have to consider the project in a subsequent rate hearing. The Department of Commerce will also be interested in all wind projects, but since the Commissioner of the Department of Commerce is a member of the EQB board, that agency will always be provided with such applications.

The rule requires the applicant to provide a hard copy of the application to each landowner within the boundaries of the proposed LWECS site. These are the people who are most directly affected by the project and who are most likely to review the

application. The EQB experience with all kinds of energy facilities is that the landowners whose property is most directly affected want to be provided with a hard copy of the application.

Once an application has been accepted, the applicant must submit a number of additional copies to the EQB. The rule does not specify how many copies of the application the applicant must submit. The chair will inform the applicant of the number. The EQB would like to minimize the number of hard copies that are required, but the EQB has a fairly extensive mailing list of agencies and citizens who require a copy of such documents. It is likely that the EQB will require 40 or more copies.

4401.0470 PUBLIC ADVISOR The Power Plant Siting Act, Minnesota Statutes sections 116C.51 to 116C.69, which was passed in 1973, gives the EQB jurisdiction over power plants other than wind projects and over high voltage transmission lines. One of the requirements of the Power Plant Siting Act is that the EQB appoint a staff person to act as a public advisor when a permit application for a power plant or transmission line is submitted. Minnesota Statutes section 116C.59, subd. 3. There is no corresponding requirement in the wind power statutes, but the EQB believes that continuation of this practice is desirable. Therefore, the EQB is proposing to adopt this section to provide for the appointment of a staff person to assist the public in participating in LWECs permit proceedings. The EQB has appointed a public advisor in the other wind project permit proceedings and the public has appreciated having such a person to consult about the process.

The language in this section is based on the language in the existing power plant siting rules. Minnesota Rules part 4400.0900. It is important to emphasize in the rule that while this staff person can assist the public in understanding the process, the staff cannot act as a legal adviser or advocate for any member of the public.

4401.0500 PRELIMINARY DETERMINATION AND DRAFT SITE PERMIT.

Subpart 1. Preliminary determination. This rule provides that within 45 days after acceptance of an application, the Chair must make a preliminary determination whether a permit may be issued and prepare a draft site permit with proposed conditions if a permit may be issued. This is the process followed by other agencies in administering permit programs. See the Pollution Control Agency rules on permits. Minnesota Rules parts 7001.0100 and 7001.1080.

The existence of a draft site permit will help the public and the applicant focus on any issues that are associated with the project. It will convey a preliminary decision by the chair that a site permit may be issued, and the proposed conditions will identify any potential issues of concern. The EQB has issued seven site permits for LWECs over the last six years and these permits have been quite similar in content. The EQB believes that it can quickly make a preliminary decision on whether a permit is appropriate and can draft the document with conditions based on the other permits that have been issued.

Subpart 2. Effect of draft site permit. This provision is necessary to clarify that issuance of a draft site permit does not mean that a permit is guaranteed. The EQB could still deny the permit based on information that is collected during the permit process. The permit conditions can certainly be changed in any manner that is supported by the record. Also, this rule emphasizes that a draft site permit does not authorize anything. A permit applicant is not authorized to begin construction of a wind project simply because the chair has sent a draft site permit out for public comment.

4401.0550 PUBLIC PARTICIPATION. This rule is intended to ensure that the public has an opportunity to participate in the processing of a permit application for a proposed wind project. The statute requires the EQB to include in its rules procedures for notifying the public of an application and affording opportunities for a public information meeting and a public hearing on a proposed LWECs. Minnesota Statutes section 116C.695(3). Some of the provisions in these proposed rules intended to provide public notice, part 4401.0460, and to assist the public, part 4401.0470, have already been discussed. This rule addresses additional notice and opportunities for public participation in the process.

Subpart 1. Public notice. Part 4401.0460 specifies requirements for notifying the public that a permit application for a wind project has been accepted by the EQB. This rule, part 4401.0550, specifies the notice that must be given by the EQB, not the applicant, about how the EQB will actually process the application and how the public may participate.

The rule does not specify when the notice must be given, but since it is not given until after a draft site permit is prepared, it could be as long as 45 days after acceptance of the application. However, with the Navitas and Chanarambie permits issued in May 2001, the staff had a draft site permit prepared within days after the application was accepted, so this notice was provided shortly after the application was accepted. That is the reason part 4401.0460, subpart 2, recognizes that these two notices may be combined.

Items A, B, and C. Some of the information – the name of the applicant and the description of the project and the location of a hard copy of the application– are repetitious from information the applicant must provide under 4401.0460. But it is helpful for the EQB to include that information in its notice as well.

Item D. This item requires a statement in the notice that a draft site permit is available. The draft permit will focus the issues for the public so it is important that the public knows that such a document is available.

Item E. This provision requires the EQB to identify the name of the public advisor appointed by the Chair. The public needs the identity of this person so the public knows who to contact at the EQB staff with its questions.

Item F. The notice must contain the time and place of a public information meeting that the EQB will hold on every site permit application. As discussed below, the

public must be given notice that a public meeting will be held in the area of the proposed project before the EQB will make a decision on a permit.

Item G. The notice must notify the public that comments may be submitted on the draft permit within a specified time period. The time period is discussed under subpart 4 of this rule. Also, the notice must inform the public that any person can request a contested case hearing on the matter. This hearing option is discussed under subpart 5.

Item H. Item H. requires the EQB to explain the anticipated procedures for reaching a final decision on the permit application. This requirement is another example of how the EQB wants to ensure that the public is fully aware of its opportunities to participate in the permitting process.

A related issue that should be discussed here under this proposed rule is the authority of the EQB to appoint a citizen advisory task force. The Power Plant Siting Act, which applies to large electric power generating plants and high voltage transmission lines, provides that the EQB can create a citizen advisory task force to assist the agency in siting and routing these kind of projects. Minnesota Statutes section 116C.59, subd. 1, as amended by Minnesota Laws 2001, chapter 212, article 7, section 18. These wind rules on LWECs do not contain a specific provision for creating such a task force. The reason for that is unlike the traditional coal-fired and natural gas-fired power plants, where several sites can be considered for the location of the plant, the wind developer has one particular area in mind for the project. There is not a great deal a citizen advisory task force can do with regard to selecting a site for a wind project.

In 1995, with the Lake Benton I project, the EQB actually did appoint a citizen advisory task force. That project, however, was proposed under the old power plant siting provisions that required an applicant to propose at least two sites. The task force did have two sites to review and did make a recommendation on a preferred site. Today, however, under these newer wind siting statutes, there are not two sites to review, and there is no role for a citizen advisory task force to play in reviewing potential sites.

Subpart 2. Distribution of public notice. While subpart 1 specifies what has to be in the notice the EQB will give the public, this rule addresses how to give that notice. Newspaper ads have historically been an effective means of alerting the public to matters pending before the EQB, and this rule continues that practice. Also, the EQB usually compiles a list of names and addresses of people who are known to the EQB to be interested in certain matters or certain kinds of matters, and the EQB will assuredly contact directly any person who asks to be notified about wind permits generally or a certain project specifically. Finally, the EQB Monitor has been published by the EQB for about 25 years, and the public has come to expect information like notice of permit applications in the Monitor. The Monitor is also available electronically on the EQB webpage, and thousands of people often check the Monitor on their computers for information.

Subpart 3. Public comments on draft permit. The public must be given an opportunity to submit comments on a proposed project. This rule gives the public a minimum of 30 days after publication of the draft site permit in the EQB Monitor to submit comments. The EQB can allow more than 30 days if the Chair believes that more time is appropriate in the circumstances. Also, the rule allows the Chair to extend the comment period if necessary to accommodate members of the public who have a good reason for needing more time. Further, the public will actually have more than 30 days from the time the notice of the acceptance of the permit application was first given and the application made available in local governmental offices.

Subpart 4. Public information meeting. The rule requires that the EQB hold a public informational meeting on each permit application. The EQB has held public informational meetings on all previous wind projects that have been permitted, and the EQB, and the public presumably, has found these meetings to be helpful in gathering information on a particular project. It is worthwhile to continue this practice.

The rule specifies how the meeting should be noticed and scheduled. The time frames provided are designed to afford the public an opportunity to meet with the EQB staff and the applicant at the meeting, ask their questions and gather information, and then have time to submit written comments if desired. The rule provides that the Chair can extend the comment period upon request.

Subpart 5. Contested case hearing. The statute requires that the EQB rules must provide for the conduct of a public hearing. Minnesota Statutes section 116C.695(3). The EQB does not read the statute to require a contested case hearing presided over by an administrative law judge in every case, as is specified in the Power Plant Siting Act for large electric generating power plants and high voltage transmission lines. Minnesota Statutes section 116C.57, subd. 2d., as amended by chapter 212, article 7, sec. 10. Instead, the EQB believes it is in compliance with the statute to provide for public meetings and an opportunity to request a contested case hearing in an appropriate situation. With only 180 days to complete the permitting process, it is unlikely the Legislature intended the EQB to hold a contested case hearing on every permit application.

During the public comment period, any person may request a contested case hearing. The person requesting the hearing must put the request in writing and specify the issues to be addressed in the hearing and the reasons why a hearing is necessary. The request will be presented to the full board. There must be a good reason to go through the time and expense of a contested case hearing. Item B. provides that the board will hold a hearing if it finds that a material issue of fact is in dispute and the holding of a hearing would aid the EQB in making a final determination on the permit application. These are reasonable criteria to apply in determining whether a contested case hearing is appropriate.

It is reasonable to impose a time limit on when a person may ask for a contested case hearing. The proposed rule allows the public to ask for a hearing any time up to the day

the comment period on the draft site permit ends. This is a minimum of 30 days after the draft site permit becomes available.

If a hearing is ordered, it will be a contested case hearing, presided over by an administrative law judge from the Office of Administrative Hearings who will conduct the hearing and write a report making recommendations on the site permit. Item C of the subpart specifically recognizes the role of the Office of Administrative Hearings. It is likely that the board will have to extend the time to act on the permit if such a hearing is held.

The only contested case hearing the EQB has held on a LWECS project involved the Lake Benton I project in 1995, in which two developers were competing for the same project. The other six LWECS that have been built along Buffalo Ridge were permitted without any controversy. No members of the public requested hearings on any of those projects. The EQB expects that future projects will also be able to be permitted without a contested case hearing, but this rule will be available if the situation should arise where there is public objection.

4401.0600 FINAL PERMIT DECISION.

Subpart 1. Board action. This subpart recognizes that it is the full Board that will make the ultimate permit decision. The rule provides that the Board must follow the applicable contested case procedures in those situations where a hearing was held. Those requirements can be found in the EQB's own procedural rules, Minnesota Rules chapter 4405, and in the rules of the Office of Administrative Hearings, Minnesota Rules chapter 1405, and in the Administrative Procedure Act, Minnesota Statutes sections 14.57 to 14.62.

When a hearing has not been held, the Board must still act on the basis of the record that has been created and follow its own procedural requirements in Minnesota Rules chapter 4405, for bringing matters to the Board at a regular monthly meeting for action.

Subpart 2. Time limit for decision. This provision is merely a repeat of the statutory requirement that the EQB has 180 days after acceptance of the application to act on the request. Minnesota Statutes section 116C.694(3). However, the statute allows the EQB to extend this deadline for cause, and the rule recognizes that possibility. It is impossible to identify in the rule all the reasons for extending a deadline, and the EQB has not even attempted to list any acceptable reasons. It is reasonable to address this question on an ad hoc basis as the situation arises. Of course, if the applicant agrees to the extension, it is reasonable to extend the time. In all cases, the EQB will not unreasonably delay reaching a decision on a permit.

In the past, for projects that were not contested, the EQB has been able to issue a site permit within just a month or two from the date the application was submitted. Under these rules, requiring certain notices to be given and affording time for public comment,

the EQB should be able to make a final decision on an uncontested permit request within three or four months from the day the application is accepted.

Subpart 3. Determination by board. This rule sets forth the standard for issuance of a permit. The requirements are taken from the statute setting forth state policy to site LWECS in an orderly manner that is compatible with environmental preservation, sustainable development, and the efficient use of resources. Minnesota Statutes section 116C.693. These criteria are admittedly subjective, but they are the standards established by the Legislature, and in the seven wind permits the EQB has issued to date, application of these criteria has not been a problem. It is reasonable for the EQB to attempt to minimize the environmental impacts of the project, ensure the continued development of the wind resource, and utilize the wind resource in an efficient manner that keeps the costs of wind power as low as possible.

Subpart 4. Conditions. The EQB is authorized by statute to include conditions in any wind permit it issues. Minnesota Statutes section 116C.694(d). The EQB has not attempted to establish by rule any conditions that go into all wind permits. Appropriate conditions are determined during the permitting process. The information required to be included with the permit application is intended to allow the EQB to establish appropriate conditions reflecting the specifics of the project.

The seven wind permits that the EQB has issued generally contain the same permit conditions, and it is likely that permits issued in the future will contain identical or similar conditions. The last two wind permits issued by the Board - the Navitas permit and the Chanarambie Power Partners permit – are essentially identical. Nonetheless, the EQB is not attempting in this rulemaking to establish any conditions by rule.

There are a couple of rule requirements in part 4401.0610 that will be included in the permits that are issued, so in a sense these rule requirements are permit conditions. These requirements are discussed below.

Subpart 5. Term. The statute does not establish any definitive term for a wind permit. The EQB proposes to adopt by rule a term of 30 years for an LWECS permit. The EQB has included this 30-year term in its existing permits without objection. The 30 years is based on the generally accepted fact that 30 years is about how long a wind turbine is expected to last. However, the rule does provide that the permit can be extended so the EQB has no intention of requiring the removal of turbines that have a useful life. Requiring a renewal after 30 years, however, will afford the EQB an opportunity to take a fresh look at an old project and determine whether there is useful life left.

4401.0610 EFFECT OF PERMIT.

Subpart 1. Wind rights. This rule provides that even if a person obtains a wind permit from the EQB, the permit itself does not convey the right to install any wind turbines if the permittee does not hold the wind rights in the area where the permittee

wants to construct the turbine. Many wind developers are private organizations without the authority of eminent domain that would allow the permittee to condemn land. A wind developer cannot simply march onto private property and begin installing wind turbines.

This issue came to light in May 2001 when both Navitas Energy and Chanarambie Power Partners wanted a wind permit to construct turbines in the same area. Neither one held the wind rights in the area contested. In order to proceed with issuance of a permit to both developers, the EQB included language in their permits that provided that they could not go ahead in the contested area until the wind rights were obtained, and then the developer that failed to get the wind rights was precluded from building in that area. See the Navitas and Chanarambie permits. This seemed like a reasonable solution to the issue, one that allowed the developers to proceed with their projects in other areas, and the EQB has determined to incorporate this approach into the rule.

Several years ago, when the first wind projects were being developed along Buffalo Ridge by Northern States Power Company, NSP solicited bids from wind developers with the condition that NSP would provide the wind rights. Now, the developers are responsible for obtaining their own wind rights

While wind rights are required in order to construct a wind project, the EQB has not necessarily held up the issuance of a permit when a developer is still negotiating for certain wind rights. With the two permits issued in May 2001 to Navitas Energy and Chanarambie Power Partners, the Board included in both permits a particular area for which neither permittee held the wind rights, but provided that only that developer that obtained the wind rights could develop in the area. This was a reasonable solution in May 2001 and may continue to be a reasonable method to deal with situations where a wind developer has not obtained the wind rights. However, a developer with wind rights in a particular area may also apply for a permit and pre-empt another developer with a permit from developing in a particular area.

Subpart 2. Other LWECS construction. This subpart is a corollary to subpart 1. While Navitas and Chanarambie sought their permits simultaneously, in the future two wind developers may seek a permit to place turbines in same area at different times. This rule recognizes that just because the first developer obtains a permit for a certain area, that a second developer cannot seek a permit for the same area if the first developer does not hold the wind rights in the area permitted. The EQB believes that this kind of rule will allow developers to continue with their development plans and result in expeditious development of the wind resource in Minnesota.

Subpart 3. Power purchase contract. This is another related issue. A wind developer is not going to be able to obtain financing of a proposed project if the developer has nobody to buy the wind power that is to be generated. However, a developer may seek a permit from the EQB while it is negotiating a power purchase agreement or other enforceable mechanism for sale of the power. This provision will allow the EQB to proceed with issuance of the permit even though the details on a power purchase agreement have not been worked out. This was the situation with the Navitas

and Chanarambie permits. In that case, the EQB gave both developers a permit but conditioned the permits on the obtaining of a power purchase agreement or other mechanism for selling the power. If the permittee was not able to finalize a power purchase agreement within a finite time, less than one year in Chanarambie's case and about a year with Navitas, the permit was null and void. Again, this kind of approach allows the EQB to issue the permit and keep the developer moving with its plans, and yet not jeopardize the use of the wind resource by another developer with wind rights or a power purchase agreement.

It was discussed above in section 4401.0600, subpart 4 (Conditions) that the EQB had not attempted to establish conditions in the rule. In effect, however, the requirements in this part 4401.0610 do establish conditions that will be placed in wind permits.

4401.0620 DELAY IN COSTRUCTION. Because the Legislature wants to see an efficient and orderly development of the wind resources in this state, the EQB has proposed this condition to require a permittee to begin construction of the project within two years, and if construction has not begun within that timeframe, the permittee must advise the Board of the reason for the delay. The Board may then consider whether to revoke the permit. No permit would be revoked without notice and opportunity to be heard and compliance with all of the permittee's rights.

The EQB has required in its Power Plant Siting rules for years, Minnesota Rules part 4400.4000, that if a large power plant or high voltage transmission line permitted by the Board is not placed under construction within four years, the Board shall suspend the permit and the permittee cannot proceed without a reinstatement of the permit by the Board. This same concept is continued in this rule, although the timeframe is shorter and the suspension or revocation of the permit is not automatic. The reason for the rule is that at least for the larger projects (over 50 megawatts), the Public Utilities Commission will have determined that the project is needed. If the project is needed, the EQB, and perhaps the PUC and other agencies as well, want to know what is holding up construction, and whether another developer or another project should be permitted.

4401.0700 PERMIT AMENDMENT OR REVOCATION.

Subpart 1. New boundary. When a wind permit is issued for a proposed project, the boundaries of the project are specifically defined in the permit. Once the permittee completes its micrositing process and determines the specific locations for the turbines, however, the size of the project may shrink in size. The EQB then redefines the boundaries of the project to be the minimum area required so that the areas not used are available for other projects.

In the past this amendment of the permit to redefine the boundaries has been done by the board. But because it is a rather routine matter, the proposed rule would delegate that authority to the chair. This delegation allows this task to be completed with a minimum of administrative delay. However, the rule does provide that if there is a dispute over the precise boundaries of the project, any person can bring the matter to the full board. This

could be the permittee, who thinks the project area has shrunk too much, or another developer who wants the boundaries even smaller. The EQB has not experienced any complaints over the redefining of the boundaries, but the rule provides a process in case an objection is raised.

Subpart 2. Permit amendment. The statute recognizes that the Board may “deny, modify, suspend, or revoke a permit.” Minnesota Statutes section 116C.694(d). This subpart simply repeats that authority.

Subpart 3. Permit revocation. This subpart recognizes that the Board may revoke a permit in certain situations and the rule specifies the situations under which the permit may be revoked. The first condition in Item A is when the applicant has knowingly made a false statement as part of the application. Obviously, a permitting agency has the authority to revoke a permit that was obtained falsely, and that is what this provision says.

Item B allows the Board to revoke a permit if the permittee has failed to comply with the terms and conditions of the permit. Again, this is a situation where any permitting agency could chose to revoke a permit. However, violation of a permit condition is not an automatic revocation. The Board has discretion in how to respond to a permit violation. Not every permit violation is of such consequence that revocation or other sanction is appropriate. This will be a case-by-case decision.

Item C allows the Board to revoke a permit if human health or the environment is endangered. Here, too, the Board has discretion and it will be an ad hoc decision.

Item D covers the situation where the permittee has violated other laws that reflect on the ability of the permittee to comply with the permit.

The EQB has never revoked a wind permit, or any other permit, that it has issued. It is unlikely that a permittee will ever engage in the kind of conduct specified here. Nonetheless, it is reasonable to provide in the rules for revocation of a permit if the situation should arise.

Subpart 4. Procedure. Because the EQB has discretion whether to revoke a permit even if certain conduct has been engaged in, and because a permittee is entitled to certain due process rights before a permit can be taken away, this subpart establishes that the EQB must afford the permittee the right to notice and opportunity to be heard before a permit can be amended or revoked. The rule also recognizes that the Board may act on its own volition, or any person may bring an alleged misconduct situation to the Board’s attention.

4401.0800 FEES.

Minnesota Statutes section 116C.695(7) provides that the board shall adopt rules governing “payment of fees for the necessary and reasonable costs of the board in acting

on a permit application and carrying out the requirements of sections 116C.691 to 116C.697. The EQB is not establishing in this rule that applicants must pay fees; that was established by the Legislature in the statute. Instead, this rule only addresses the manner in which the fees are paid.

Minnesota Statutes section 16A.1283 is a new statute that was passed in 1999 that provides that a state agency may not impose a new fee or increase an existing fee without the approval of the Legislature. In this case, the EQB is not imposing a new fee or increasing an existing fee. The fee remains exactly as the Legislature created it in 1995. Therefore, it is not necessary to obtain legislative approval to adopt this subpart of the rules.

Subpart 1. Fee requirement. The first sentence of this rule merely recognizes the requirement that a permit applicant must pay a fee. The second sentence attempts to identify some of the necessary and reasonable costs that must be paid in processing a permit application. Obviously, staff time is a significant part of the necessary expenses. In addition, there are costs the EQB must pay to other persons, such as newspapers and postage and travel expenses, that must be covered. Often the EQB must seek legal advice in processing a particular application, and this is certainly true if any litigation should result. There are times when the EQB's permit decisions are challenged in court. In fact, the first LWECs permit the EQB issued, to Northern States Power Company for the Lake Benton Phase I project, was challenged in court.

Subpart 2. Determination of board budget. The applicant must pay the necessary and reasonable expenses of the EQB in processing the application. When the permit is applied for, nobody knows exactly how much it will cost to process, so the chair, working with the EQB staff, will prepare an estimate of the expected costs. The estimate will be based on past experiences in processing LWECs applications and on the staff's expectations of what will be involved in processing the pending application. The expenses incurred by the EQB in issuing the last two wind permits issued by the Board – the Navitas and Chanarambie Power Partners permits issued in May 2001 and referenced throughout this document – were approximately \$10,000. This is a reasonable fee and the applicants have not complained about the amount.

If an applicant should disagree with the chair's estimate, the rule allows the applicant to bring the complaint to the attention of the board. The EQB does not expect this to happen, because the staff will be able to make a fairly accurate estimate, and because in the end, the applicant will not be required to pay more than the actual costs. In any event, the rule recognizes that an applicant could ask the board to review the estimated budget.

Subpart 3. Initial payment. The EQB will begin incurring costs from the time the application is submitted so it is necessary for the applicant to make a payment to the agency essentially at the same time the application is submitted. The rule recognizes that the EQB will not begin to process the application until the first payment is made. If the applicant is late in making the payment, the EQB's timeframe for completing the permit process will not commence. The EQB's experience has been that applicants will discuss

the budget with the staff before the application is even submitted, so that when the applicant does submit the application, a check for the initial amount can be included.

The rule requires that the first payment be at least 50% of the total estimated budget. Because the staff must complete a great deal of work in a relatively short time after the application is accepted, it is reasonable to require one-half of the total payment be made upfront. Also, since the timeframe allowed for the entire process is only 180 days, it is preferable to not spend a lot of time sending invoices out to the applicant for additional payments. Some applicants might simply choose to submit the entire estimated fee upfront with the application and wait until the final accounting to determine the actual expenses.

Minnesota Statutes section 116C.69, subd. 2 and 3, which apply to permitting of power plants and transmission lines, requires that permit fees be deposited in a separate account for the specific project. Section 116C.695 does not include that requirement, but the EQB has always in the past maintained separate accounts for LWECS applications, and it makes sense to continue that practice. Maintaining a separate account helps ensure that only the necessary and reasonable costs attributable to the project are charged to the applicant.

Subpart 4. Periodic payments. If the applicant only pays one-half of the estimated budget, or if the estimated budget turns out to be insufficient, the EQB will send an invoice to the applicant and request additional payments. The EQB expects the applicant to make the payments before the EQB incurs expenditures beyond what is available in the account, and the EQB usually requests payment within 30 days of receipt of the invoice. It is reasonable to require that the applicant maintain a positive balance in the account to pay EQB expenses as they are incurred.

The rule provides that if the applicant has an outstanding balance due at the time the EQB is prepared to make a final decision on the permit, the applicant must pay that amount before a final decision is made. It makes good sense to ensure that the applicant pays what is owed for processing the permit before the final decision is made.

Subpart 5. Final accounting. Since the applicant pays only what is necessary and reasonable, a final accounting is required once all the expenses have been incurred. The final accounting will indicate exactly what costs and expenses were paid as part of the application. The EQB's accounting people will prepare the final accounting. If the applicant believes that the figures are unnecessary or unreasonable, the applicant can request that the board review the numbers and make a final decision on the amount due.

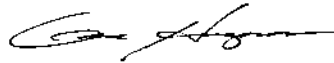
The final accounting cannot occur until the EQB has determined all its expenses in processing the permit application. It is possible that an aggrieved person may challenge the Board's final decision by bringing a lawsuit, so the final accounting cannot occur until the time for judicial review has expired.

It is reasonable to provide only a short period of time for either the applicant to make an additional payment, or the EQB to refund an overpayment, once the final accounting is determined. The rule provides for a thirty-day period for the final payment. Both the applicant and the EQB should be able to make the requisite payment within thirty days of the determination of the amount.

VI. Conclusion

As explained in this document, the proposed rules will help ensure that the EQB can carry out its legislative mandate to ensure the orderly development of the wind resources in this state while protecting the environment. The permit program established by these rules for Large Wind Energy Conversion Systems should operate in an effective and expeditious fashion to accommodate applicants who seek a prompt resolution of their permit application and the public who seek an opportunity to be informed and to be heard.

DATED: September 20, 2001



GENE HUGOSON
Chair
Minnesota Environmental Quality Board

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EXHIBIT LIST

1. 25 State Register 1382 (February 12, 2001) (Notice of Intent to Solicit Outside Opinion)
2. EQB Monitor (March 5, 2001)
3. List of Persons Interested in Rules on Wind Projects
4. List of Wind Permits Issued by the EQB
5. Interim Site Permit Procedures
6. Lake Benton I Permit
7. Navitas Energy, LLC
 - a. Application
 - b. Permit
 - c. Findings of Fact
8. Chanarambie Power Partners, LLC
 - a. Application
 - b. Permit
 - c. Findings of Fact
9. Avian Study
10. Energy Security and Reliability Act of 2001

**ADDENDUM TO
STATEMENT OF NEED AND REASONABLENESS**

At the Environmental Quality Board meeting on September 20, 2001, when the Board approved the Statement of Need and Reasonableness and authorized the Chair to go forward with formal rulemaking on the proposed rules, the Board made one change in the proposed rules as they were presented to the Board. The Board in its authorizing resolution directed the staff to add a short Addendum to the SONAR explaining this one change, and that is the purpose of this Addendum.

The one change the Board made in the proposed rules was to change the word “electricity” in part 4401.0610, subpart 3 to the word “power.” The changed language now reads as follows:

Subp. 3. Power purchase agreement. A site permit does not authorize construction of the project until the permittee has obtained a power purchase agreement or some other enforceable mechanism for sale of the power to be generated by the project. If the permittee does not have a power purchase agreement or other enforceable mechanism at the time the permit is issued, the board shall provide in the permit that the permittee shall advise the board when it obtains a commitment for purchase of the power. The board may establish as a condition in the permit a date by which the permittee must obtain a power purchase agreement or other enforceable mechanism or the site permit is null and void.

The reason for the change is to recognize that the energy generated by wind turbines could be in a form other than electricity. For example, the electricity generated by the turbines could be used to produce hydrogen, which could then be stored and sold to a purchaser for use in generating electricity at a later time, or even sold for other purposes. By using a broader term in this subpart, the EQB is recognizing that it may be possible to utilize wind turbines for purposes other than the immediate sale of electricity.

On September 24, 2001, amendments to the rules of the Office of Administrative Hearings regarding rulemaking became effective. The amendments were published in the State Register on September 17, 2001 (26 State Register 391).

One of the changes made to the rules relates to information in the Statement of Need and Reasonableness. The new rule now requires the SONAR to include the date the statement is made available for public review. Minnesota Rules part 1400.2070, subpart 1.E. This rule change became effective after the EQB Board approved the Statement of Need and Reasonableness in this case but this Addendum is added to provide this information.

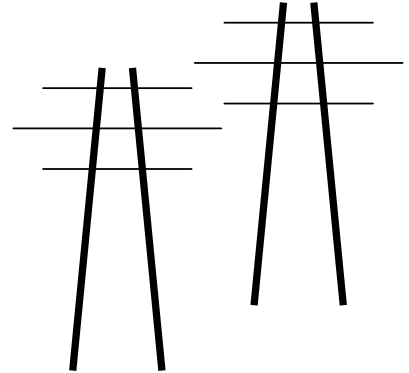
The Statement of Need and Reasonableness first became available to the public on September 13, 2001, the day the information for the EQB’s September 20 monthly Board

meeting was mailed to Board members and to persons on the agency's mailing list. The SONAR has been available for the asking since that date. The SONAR was discussed at the Board meeting on September 20, 2001.

Legalelectric, Inc.

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October 4, 2017

LauraSue Schlatter
Administrative Law Judge
OAH
P.O. Box 64620
St. Paul, MN 55164-0620

via eFiling and eService

RE: Reply to Freeborn Wind Energy’s Response to AFCL’s Motion & Petition
 OAH Docket: 80-2500-34633
 MPCU Docket: IP-6946/WS-17-410

Dear Judge Schlatter:

On behalf of Association of Freeborn County Landowners, enclosed please find ACLU’s Reply to Freeborn Wind Energy’s Response to AFCL’s Motion & Petition .

Please let me know if you have any questions or require anything further.

Very truly yours,

Carol A. Overland
Attorney at Law

Enclosure

cc: Christina Bruesven, Fredricksen & Byron, for Freeborn Wind – via eFiling
 Association of Freeborn County Landowners
 Hard copy to ALJ Schlatter

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
for the
MINNESOTA PUBLIC UTILITIES COMMISSION**

CERTIFICATE OF SERVICE

ASSOCIATION OF FREEBORN COUNTY LANDOWNERS

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

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

I, Carol A. Overland, hereby certify that I have this day, served copies of the attached Reply to Freeborn Wind Energy's Response to AFCL's Motion & Petition by electronic filing and eService.



October 4, 2017

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**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
for the
MINNESOTA PUBLIC UTILITIES COMMISSION**

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. IP-6946/WS-17-410

**REPLY OF ASSOCIATION OF FREEBORN COUNTY LANDOWNERS TO
FREEBORN'S RESPONSE TO MOTION FOR
CERTIFICATION TO PUBLIC UTILITIES COMMISSION ITS PETITION,
AND PETITION TO THE COMMISSION, FOR APPOINTMENT OF AN
ADVISORY TASK FORCE AND A SCIENCE ADVISORY TASK FORCE**

The Association of Freeborn County Landowners (hereinafter "AFCL") has this Reply to Applicant's Response to Association of Freeborn County Landowners Motion for Certification and Petition for Appointment of an Advisory Task Force and a Science Advisory Task Force.

I. MINN. STAT. §216E.08 IS APPLICABLE TO THIS PROJECT.

The statute authorizing Task Forces is expressly not exempted and is applicable to wind siting dockets, the law is clear:

(a) **The requirements of chapter 216E do not apply to the siting of LWECS, except for sections 216E.01; 216E.03, subdivision 7; 216E.08; 216E.11; 216E.12; 216E.14; 216E.15; 216E.17; and 216E.18, subdivision 3, which do apply.**

Minn. Stat. §216F.02 EXEMPTIONS (emphasis added). Applicants may not like it, but the law is the law.

II. PETITION IS NOT UNTIMELY – THERE ARE NO TIME CONSTRAINTS IN THE STATUTE, AND THE COMMISSION BY

STATUTE MAY SET A DATE FOR EXPIRATION OF AN ADVISORY TASK FORCE.

Freeborn argues that AFCL’s request for an Advisory Task Force is untimely and that it “fails to comport with the timing constraints on an Advisory Task Force,” arguing that the intent is “an Advisory Task Force that would persist through the contested case proceeding.” Response, p. 8.

Despite Applicant’s claim, an unending Task Force won’t occur – that is legally prohibited. The Commission identifies the date for the advisory task force to expire, clearly authorized in two separate statutes.

Advisory task force.

The commission may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission... **The task forces expire as provided in section 15.059, subdivision 6.** At the time the task force is appointed, the commission shall specify the charge to the task force. **The task force shall expire** upon completion of its charge, upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or **upon the specific date identified by the commission in the charge**, whichever occurs first.

Minn. Stat. §216E.08, Subd. 1 (emphasis added). “If the existence of a task force is authorized but not mandated by statute, the task force shall expire at the pleasure of the person or group which creates the task force...” Minn. Stat. §15.059, Subd. 6. In 2001, language was added to assure that a Task Force did not extend through the contested case, as had occurred in the Chisago I proceeding:

At the time the task force is appointed, the board shall specify the charge to the task force. The task force shall expire upon completion of its charge, upon designation by the board of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the board in the charge, whichever occurs first.

2001 Session Laws, Chapter 212, Art. 7, Section 18¹. Applicant’s nightmare apparition of “an Advisory Task Force that would persist through the contested case proceeding” is not only imagined, it is prohibited.

Advisory Task Forces now typically meet just 3 times in as many weeks, as scheduled by the Department of Commerce. AFCL requests that the Advisory Task Force be appointed, and that the date the Advisory Task Force expires be set no later than December 11, 2017, the same date as the Intervention deadline. This would not delay the docket schedule.

III. THE PURPOSE OF AN ADVISORY TASK FORCE IS TO ASSEMBLE INFORMATION AND EVALUATE SITES.

The purpose of an Advisory Task Force is to inform the record and to evaluate sites and propose alternative sites for consideration. A task force is not limited by statute to scoping for environmental review. Again, referring back to the statute:

Advisory task force.

The commission may appoint one or more advisory task forces to assist it in carrying out its duties. **Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission... At the time the task force is appointed, the commission shall specify the charge to the task force.** The task force shall expire upon completion of its charge, **upon designation by the commission of alternative sites or routes to be included in the environmental impact statement, or upon the specific date identified by the commission in the charge, whichever occurs first.**

Minn. Stat. §216E.08, Subd. 1 (emphasis added). Evaluating sites and proposing alternate sites is a legitimate purpose for a task force authorized under the statute. *Id.* Matters including wildlife habitat, shadow flicker and setback with these and other issues in mind falls within site evaluation and proposing alternate sites. *Id.* This is not beyond the scope of a reasonable Task Force charge.

¹ Online at: <https://www.revisor.mn.gov/laws/?id=212&year=2001&type=0>

It is not AFCL's fault that there is no environmental review for a siting wind project – that was the doing of the legislature and those who lobbied for the passage of the wind siting statutes. The lack of environmental review and wind-specific siting criteria is a significant factor contributing to the difficulty of siting wind projects. As it is, the Department of Commerce prepares the Draft Site Permit, and that document contains information and conditions under which the project may be permitted. An Advisory Task Force will help inform the record and provide information to support siting alternatives, a subsequent permit, and its conditions.

IV. A PETITION FOR A SCIENTIFIC ADVISORY TASK FORCE IS NOT A RULEMAKING PETITION!

Applicant makes the claim that:

AFCL's request for a Scientific Advisory Task force is, quite transparently, a second try to commence a rulemaking relating to wind turbine noise.

Response, p. 8. Applicant's conclusion is bizarre. AFCL's counsel's Rulemaking Petitions and Task Force Petitions are a matter of record, having submitted many of both types over the years². Both of Applicant's attorneys of record, and AFCL's attorney of record, have spent more than five years working together, with others³, on the Commission's Certificate of Need and power plant siting/transmission routing rules, Chapters 7849 and 7850.⁴ This background should be fresh in all our minds.

If a second try to commence rulemaking was desired, there would be another rulemaking petition... and there will be. The Commission requested a restatement of an earlier Ch. 7854 Rulemaking Petition. A draft revision of this petition was forwarded to Goodhue Wind Truth for

² Petitions for Rulemaking include Minn. R. Ch. 1400 and 1405, Minn. R. Ch. 7030, Minn. R. 7840 and 7850, Minn. R. Ch. 7829, and two regarding Minn. R. Ch. 7854, the wind siting rules in 2012 and 2016 and again in the near future after adoption of Minn. R. 7849 and 7850. Successful Task Force Petitions have included those for CapX Fargo, Brookings and LaCrosse transmission lines, Chisago transmission line, and the Excelsior Energy Mesaba Project, among others.

³ PUC Docket R-12-1246. Participants include Goodhue Wind Truth's Marie McNamara and North Route Group's Suzanne Rohlfiing.

⁴ See PUC Docket R-12-1246, still to come before the Commission for release for comment.

review some time ago, and GWT is waiting until the Minn. R. 7849 and 7850 rules are released for comment, and it will be refiled if the promised Minn. R. 7854 rulemaking does not begin soon. Wind siting rules and standards are sorely needed.

MPCA's Commissioner states that there is not enough information for a Minn. R. Ch. 7030 rulemaking, and the Scientific Advisory Task Force seems an ideal way to develop the record to the point where that rulemaking for Ch. 7030 and 7854 would be deemed appropriate and feasible, and could commence. The purpose of a Scientific Advisory Task Force is to do this general work. By statute, the Freeborn Wind Energy project docket may not be delayed pending the Scientific Advisory Task Force's conclusion of its charge, so Freeborn needn't worry about delay. This limitation should appease Freeborn Wind Energy, and Freeborn's unsupported claims and concerns should not prevent this important and necessary work on "issues presented in other wind siting proceedings." Indeed, "[t]here is nothing new or unique" about these issues – it's recurrent old business that remains unaddressed. Appointment of a Scientific Advisory Task Force is overdue.

V. CONCLUSION

The Association of Freeborn County Landowners appreciates Freeborn Wind Energy's agreement to certification to the Commission. AFCL requests that an Advisory Task Force be appointed by the Commission under its authority under Minn. Stat. §216E.08, Subd. 1 as authorized by Minn. R. 1405.2200, and that the Commission set a date certain for the Advisory Task Force to expire.

AFCL also requests a Scientific Advisory Task Force be established under Minn. Stat. §216E.08, Subd. 4, as authorized by Minn. R. 1405.2200.

The Commission alone has authority to appoint task forces. AFCL requests that the

Commission begin to address wind siting issues within its statutory authority by appointing an Advisory Task Force and a Scientific Advisory Task Force.



October 4, 2017

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