

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: Civil/Misc

Court File Number: \_\_\_\_\_

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State of Minnesota, ex. rel., Association  
of Freeborn County Landowners,

Plaintiff,

**SUMMONS**

vs.

Minnesota Public Utilities Commission,

Defendant.

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THIS SUMMONS IS DIRECTED MINNESOTA PUBLIC UTILITIES COMMISSION:

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons and is on file in the office of the court administrator of the above-named court. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. **YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

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

(612) 227-8638  
overland@legalelectric

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN**

**RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

**5. LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

**6. ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

June 10, 2020



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**STATE OF MINNESOTA****DISTRICT COURT****COUNTY OF RAMSEY****SECOND JUDICIAL DISTRICT**

CASE TYPE: Civil Other/Misc

Court File Number: \_\_\_\_\_

State of Minnesota, ex. rel., Association  
of Freeborn County Landowners,

Plaintiff,

**COMPLAINT**

vs.

Minnesota Public Utilities Commission,

Defendant.

Plaintiff Association of Freeborn County Landowners, by and through its undersigned Attorney, and on behalf of the State of Minnesota, alleges, upon knowledge as to its own acts and otherwise upon information and belief, as follows:

**NATURE OF THE ACTION**

1. The Association of Freeborn County Landowners (hereinafter "AFCL") brings this Action pursuant to the Minnesota Environmental Rights Act (hereinafter "MERA"), Minn. Stat. Chapter 116B, seeking declaratory and equitable relief, and to enjoin the Minnesota Public Utilities Commission (hereinafter "Commission" or "PUC") from further impairing, polluting, or destroying the Freeborn County footprint of the Freeborn Wind Project and the surrounding area through permitting and construction of the Freeborn Wind Project, in which Association of Freeborn County Landowners is a party, and of the area and communities surrounding the Plum Creek, Three Waters, and Buffalo Ridge wind projects. AFCL brings this action seeking a declaratory order that the state's permitting of Large Wind Energy Conversion Projects is not in

compliance with the Minnesota Environmental Policy Act; a declaratory order that the Public Utilities Commission has not complied, and must comply with, with the mandate of Minn. Stat. §216F.05 to develop rules for environmental review of wind projects; an order that the Public Utilities Commission promulgate rules for wind siting and environmental review; and a remand for additional proceedings as required by law and the Commission's rules. AFCL seeks a temporary injunction pending these directives and actions by the Commission. Minn. Stat. §116B.10.

2. The Association of Freeborn County Landowners is an association within the meaning of Minn. Stat. §116B.10, Subdivision 1, with standing to bring this Minnesota Environmental Rights action against the Public Utilities Commission. Minn. Stat. Ch. 116B.

3. The Association of Freeborn County Landowners is seeking declaratory and equitable relief, requesting a remand to the Public Utilities Commission for rulemaking and additional proceedings before the Commission, and a temporary injunction halting the construction of the Freeborn Wind, Plum Creek, Buffalo Ridge and Three Waters wind projects now beginning construction and/or in permitting before the Public Utilities Commission. The issues raised by AFCL are systemic issues dating back 25 years to when the Environmental Quality Board, then charged with siting wind projects, which rushed to site wind projects, and did so without siting criteria and rules. Since 2005, wind siting has rested in the jurisdiction of the Public Utilities Commission, after legislative transfer of wind siting responsibility. Since 1995, over 2,500 megawatts of wind has been sited in Minnesota, without siting criteria and siting rules. The systemic nature of the violations of environmental law demand that these issues be treated holistically – this goes beyond one permit issued improperly – the large wind site permitting process violates environmental law with each permit issued.

4. The Association of Freeborn County Landowners brings this action to challenge the Permits and draft permits issued by the Public Utilities Commission, the process, standards and rules, and lack thereof, used to justify approval of wind site permits, the absence of Minnesota Environmental Policy Act compliant environmental review, and the lack of wind specific siting standards and rules.

5. In addition to the Freeborn Wind Project, PUC Docket IP6946/WS-17-410<sup>1</sup>, in which AFCL is a party to the Commission's proceeding, the specific projects before the Commission in which environmental law and the potential for substantial impacts is being disregarded, in which projects are proceeding towards siting without siting rules and standards, are:

- Plum Creek Wind Project – PUC Dockets IP6997/WS-18-700
- Buffalo Ridge Wind Project – PUC Siting Docket IP-7006/WS-19-394
- Three Waters Wind Project – PUC Siting Docket IP7002/WS-19-576

6. These projects were identified in a review of noise studies as projects with potential to violate Minnesota's existing noise standard, identified because the modeling used improper inputs, resulting in understatement of expected noise levels. Of the projects identified, these four are in permitting or construction on the project has not yet begun.

## **BACKGROUND**

7. Environmental review of Large Wind Energy Conversion Projects is required by the Minnesota Environmental Policy Act:

Where there is potential for significant environmental effects resulting from any major governmental action, the action must be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement must be an analytical rather than an

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<sup>1</sup> Commission project dockets may be accessed at <https://mn.gov/puc/> and from there, "eDockets" at right of screen, then at "Docket Number" enter the year and the docket number and search.

encyclopedia document that describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement must also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision-making process, the environmental impact statement must be prepared as early as practical in the formulation of an action.

Minn. Stat. §116D.03, Subd. 2a.

8. Wind projects are sited and built in an existing community spreading over a footprint covering thousands of acres, and these projects have potential for significant environmental effects. See site footprints for Freeborn Wind (WS-17-410); Plum Creek (WS-18-700); Buffalo Ridge (WS-19-394); Three Waters (WS-19-576)<sup>2</sup>.

9. AFCL's complaint meets the MERA standards because the statutory appeal period regarding issuance of the original Freeborn Wind site permit has elapsed. Minn. Stat. §§ 216.52; 14.63. An appeal is pending of the initial Freeborn Wind/Invenergy site permit. Minnesota Court of Appeals Case No. A19-1195. The Freeborn permit has been transferred to Xcel Energy, and the Commission is expected to make a reconsideration decision soon. There is no environmental review for wind site permits and there are no wind specific wind siting rules and siting criteria.

10. The Plum Creek wind project is in the permitting process, with a scoping meeting to be held for environmental review in the Certificate of Need and transmission route, but not the siting docket. See PUC eDockets WS-18-700. There is no environmental review for wind site permits and there are no wind siting rules and siting criteria.

11. The Buffalo Ridge wind project has been delayed due to a change in ownership, with

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<sup>2</sup> Freeborn Wind – 21,313 acres in Minnesota (WS-17-410); Plum Creek – 73,000 acres (WS-18-700); Buffalo Ridge – 15,736 acres (WS-19-394); Three Waters – 48,087 (WS-19-576).

permitting activities pending. See PUC eDockets WS-19-934. There is no environmental review for wind site permits and there are no wind siting rules and siting criteria.

12. Three Waters wind project is in the permitting process, with a public hearing Scheduled regarding the Certificate of Need and site permit. There is no environmental review for wind site permits and there are no wind siting rules and siting criteria. See PUC eDockets WS-19-576.

13. These four projects are identified because, among other things, they are in the midst of the Public Utilities Commission's siting process. In each of these projects, the developers use improper inputs for modeling noise that understates the noise the project is expected to produce. The Commission has actual and constructive notice of this material flaw in modeling. The Commission has notice and should take into account "a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings." *In re Claim for Benefits by Meuleners*, 725 N.W. 2d 121, 125 (Minn. Ct. App. 2006).

14. In the Freeborn Wind docket, the Commission has been notified several times of this material flaw in modeling and other issues – that a ground factor of 0.0, on a scale of 0.0 to 1.0, is the appropriate ground factor due to the elevated source modeled, and that there is no legitimate reason for use of any other ground factor.

15. On December 18, 2019, the Commission was notified by AFCL counsel of use of this improper ground factor input in 13 wind siting permits before the Commission.<sup>3</sup> Freeborn, Plum

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<sup>3</sup> See Letter, December 18, 2019, re: Improper Ground Factors Skew Modeling and Misrepresent Probability of Compliance in ALL 13 Projects Identified by EERA as "LWECS In Permitting Process" or "LWECS Permitted." See e.g., PUC eDockets [201912-158454-14](#), filed in Nobles 2 (WS-17-597); Freeborn (WS-17-410); Blazing Star (WS-16-686); Lake Benton II (WS-18-179); Community Wind North (WS-08-1494); Jeffers Wind (WS-05-1220); (Footnote continued on next page.)

Creek, Buffalo Ridge, and Three Waters are the wind projects are in the permitting process, with permits not yet finalized.

16. The ground factor input utilized for Freeborn Wind is 0.5; for Plum Creek, 0.7; Buffalo Ridge 0.5; and Three Waters, 0.7<sup>4</sup>.

17. In 1995, the legislature mandated the then Environmental Quality Board to develop rules, including:

(1) criteria that the commission shall use to designate LWECS sites, **which must include the impact of LWECS on humans and the environment; ...**

**(4) requirements for environmental review of the LWECS...**

Minn. Stat. §216F.05<sup>5</sup>.

18. Rather than promulgate criteria including the impact of LWECS on humans and the environment, or requirements for environmental review of the LWECS, the rules instead were drafted to state that specific environmental information should be included by the applicants in the application, and only in the application:

The analysis of the environmental impacts required by this subpart satisfies the environmental review requirements of chapter 4410, parts [7849.1000](#) to [7849.2100](#), and Minnesota Statutes, chapter 116D. **No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.**

Minn. R. 7854.0500, Subd. 7 (emphasis added).

19. The 2001-2002 rulemaking process was fraught with errors, unsubstantiated assumptions, and unsupported conclusions<sup>6</sup>.

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(Footnote continued from previous page.)

Fenton Wind (WS-05-1707); Buffalo Ridge (WS-19-394); Three Waters (WS-19-576); Plum Creek (WS-18-700); Mower County (WS-06-91); Dodge County (WS-17-307); Bitter Root/Flying Cow (WS-17-749).

<sup>4</sup> Id. See Applications for ground factor. Freeborn Xcel Application Attachment E p. 7; Plum Creek Application Appendix B, p. 48; Buffalo Ridge Application Appendix C p. 6-5; Three Waters Application Appendix B p. 48.

<sup>5</sup> See Legislative History, [1995 c 203 s 5](#); [2005 c 97 art 3 s 19](#).



20. The statutory appeal period regarding promulgation of wind rules, Minn. R. Ch. 7854, has elapsed. Minn. Stat. §§ 14.44; 14.63.

21. At least two wind siting rulemaking petitions have been presented to the Commission, and denied by the Commission. The most recent was in 2018. See PUC Docket E999/R-18-518. A separate rulemaking petition was presented to the Pollution Control Agency, and it as rejected as well<sup>7</sup>.

22. This MERA action is distinct from the appeal of the Freeborn Wind permit brought by the Association of Freeborn County Landowners (Appellate Court File A19-1195), now pending, as this MERA action challenges the process and substantive issues in the Public Utilities Commission's handling of the permit review for the Freeborn, Plum Creek, Buffalo Ridge, and Three Waters wind project proceedings.

23. This MERA action challenges broader, systemic wind siting issues than those addressed in the AFCL appeal of the initial Freeborn Wind Project permit, issues which pertain to many, if not all, of the permits issued by the Public Utilities Commission. AFCL challenges the regulatory framework within which the Commission, and the Environmental Quality Board before it, have been issuing wind site permits over the last 20+ years, a process violating Minnesota environmental law. In its rush to site wind, the state has failed to comply with the Minnesota Environmental Policy Act, environmental provisions of the Power Plant Siting Act, and has failed to promulgate siting rules for wind as directed by the Minnesota legislature, issuing permits with no basis in law or rule and rejecting petitions for corrective rulemaking.

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(Footnote continued from previous page.)

<sup>6</sup> Statement of Need and Reasonableness (SONAR), Chapter 4401, September 20, 2001.

<https://www.eqb.state.mn.us/sites/default/files/documents/D%20-%20SONAR%20with%20Attachments.pdf>

<sup>7</sup> MPCA/Stine Letter to Overland, September 12, 2016 (PUC eDocket ID [20169-124844-01](#)).

24. The Minnesota Environmental Policy Act requires environmental review for any state action that “Where 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.” Minn. Stat. §116D.04, Subd. 2a.

25. Wind projects have not only “potential for significant environmental effects,” but they have been demonstrated to have significant environmental impacts, significant enough for landowners to be bought out of their homes<sup>8</sup>. Wind site permits, generally, and specifically the Freeborn, Plum Creek, Buffalo Ridge, and Three Waters wind projects permits and draft permits; and the state’s vetting and review of these projects are inadequate to protect the air, water, land, and other natural resources from pollution, impairment, or destruction.

26. The potential for significant impacts of wind have been demonstrated. The Bent Tree’s noise exceeded the state standard, proven by two state noise monitoring studies, followed by two landowner buyouts. Shadow flicker impacts are expected for Freeborn Wind, as shadow flicker modeling predicts levels of shadow flicker will require mitigation, and Bent Tree shadow flicker required mitigation through installation of blinds in a residence. The vistas across the fields are forever changed with installation of 2,500 MW of wind turbines, or one turbine outside the living room window, or the string of blinking red lights across the horizon. Minnesota DNR sites are at risk for impacts due to the developer plan to site Buffalo Ridge wind project turbines too close to DNR protected resources, design can result in a need for eagle take permits for multiple projects. The Commission shows general disregard for community concerns and objections, and objections are particularly weighty where a nuisance project is moving into an established community.

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<sup>8</sup> Bent Tree – Public Utilities Commission Order, June 8, 2018, PUC Docket 08-573 ([20186-143575-01](#)).

27. A temporary injunction is necessary where the options for redesign and/or mitigation are limited by the large footprint and the size of the turbines – it's not possible to pick up and move a wind turbine. Mitigation means shutting off or removing turbines or buying out landowners who have been suffering harm. Once the project has been built, it can't be reasonably changed. The harm is irreparable.

### COUNT ONE

#### **FAILURE TO CONDUCT ENVIRONMENTAL REVIEW FOR LARGE WIND ENERGY CONVERSION SYSTEMS IS A VIOLATION OF ENVIRONMENTAL LAW**

28. Each of the paragraphs and foregoing allegations above are repeated and realleged as if fully related herein.

29. Environmental review of Large Wind Energy Conversion Projects is required by the Minnesota Environmental Policy Act:

Where there is potential for significant environmental effects resulting from any major governmental action, the action must be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement must be an analytical rather than an encyclopedic document that describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement must also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision-making process, the environmental impact statement must be prepared as early as practical in the formulation of an action.

Minn. Stat. §116D.03, Subd. 2a.

30. The Power Plant Siting Act is well-established as environmental law, and site permits issued must also comply with MEPA and MERA. Minn. Stat. Ch. 216E; *People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council*, 266 N.W. 2d 858 (Minn. 1978).

31. The legislature mandated development of rules regarding siting and environmental

review of Large Wind Energy Conversion Systems, specifically “criteria that the commission shall use to designate LWECS sites, **which must include the impact of LWECS on humans and the environment,**” and “**requirements for environmental review of the LWECS.**” Minn. Stat. §216F.05.

32. There was a rulemaking, resulting in a chapter of rules for wind, but the result was not as mandated by the legislature. The SONAR dismissed, without support, environmental concerns and the need for environmental review.<sup>9</sup>

33. Rather than develop rules regarding the impact of LWECS on humans and the environment, and requirements for environmental review, and with no support for this result, the rule promulgated states, ““No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.” Minn. R. 7854.0500, Subp. 7.

34. Freeborn, Plum Creed, Buffalo Ridge and Three Waters wind project are each a “Large Wind Energy Conversion System,” defined as “Large wind energy conversion system” or “LWECS,” which under the statute “means any combination of WECS with a combined nameplate capacity of 5,000 kilowatts or more.” “Small Wind Energy Conversion System” is defined as “any combination of WECS with a combined nameplate capacity of less than 5,000 kilowatts.” Minn. Stat. §216F.01.

35. The potential for significant environmental impacts is obvious.

36. Wind projects tend to have a very large geographic footprint. The footprint of the Freeborn Wind Project as permitted covers roughly 21,313 acres in Minnesota; Plum Creek covers 73,000 acres; Buffalo Ridge 15,736 acres; and Three waters, 48,087 acres.

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<sup>9</sup> See Statement of Need and Reasonableness, Chapter 4401, September 20, 2001. <https://www.eqb.state.mn.us/sites/default/files/documents/D%20-%20SONAR%20with%20Attachments.pdf>

37. These projects are all on agricultural land, in a thriving pre-existing farming community established in the early years of Minnesota, most over 150 years ago, and in addition to farms, there are many residents and businesses within the project footprint.

38. All wind projects utilize scattered siting based on acquired project leases, and as above, have a large environmental footprint and a range of potential environmental impacts. The range of impacts is evidenced by information regarding “environmental impacts” required in an application, which includes demographics, including people, homes, and businesses; socioeconomic impacts; noise; visual impacts; public services and infrastructure; cultural and archaeological impacts; recreational resources; public health and safety, including air traffic, electromagnetic fields, and security and traffic; hazardous materials; land-based economics, including agriculture, forestry, and mining; tourism and community benefits; topography; soils; geologic and groundwater resources; surface water and floodplain resources; wetlands; vegetation; wildlife; and rare and unique natural resources. Minn. R. 7854.0500, Subp. 7.

39. The Commission has flatly deied multiple requests for environmental reviw of wind projects and has rejected a Petition for Environmental Assessment Worksheet for the Freeborn Wind Project. Order, March 31, 2020<sup>10</sup>.

40. Environmental review for wind projects is particularly important because once a project is built there are few options for mitigation. Although information about environmental issues is required in an application, there is no further review and analysis, and the likelihood of impacts is not discovered. Applications are declared complete even when required information,

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<a href="#">20203-161639-01</a>	PUBLIC	17-410	<input type="checkbox"/>	WS	PUC	ORDER--ORDER DENYING AFCLS PETITIONS AND AMENDING SITE PERMIT	03/31/2020
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such as a decommissioning plan, is not provided. Minn. R. 7854.0500, Subp. 13. If the project goes forward, there is no reasonable option to redesign the project or move turbines once they're installed. There is no vetting or independent verification of the application information provided, and often the information is not provided until after a permit is granted, just prior to construction of a project. Without this review, for example, if there are violations of the MPCA noise standards<sup>11</sup>, as happened in the Bent Tree wind project, there may be costly landowner buyouts. Minn. Where there are high levels of shadow flicker anticipated, "mitigation" means that homes are fitted for blinds and landowners are expected to live with blinds closed. If turbines are built too close to one of the many eagle nests in Minnesota, eagles may be killed. If the decommissioning plan is inadequate to restore land to its previous condition, and if owners walk away from the project, leases transfer responsibility to the landowner, who must then collect from the absentee project owner. Is there adequate financial assurance? If there is ice buildup on turbine blades, are the turbines far enough from homes and highways to prevent damage from a throw, as there was in the Bent Tree project? Without environmental review, landowners, residents, businesses, and Minnesota's environment can be adversely affected.

41. The Bent Tree noise settlements<sup>12</sup>, where two families were bought out and moved because of wind turbine noise exceedences, is actual and constructive notice to the Commission

<sup>11</sup> Minn. R. 7030.0400, Subp. 4.

<sup>12</sup> Bent Tree Settlement Agreements:

<a href="#">20184-142136-01</a>	PUBLIC	08-573	<input type="checkbox"/>	WS	WISCONSIN POWER AND LIGHT COMPANY	LETTER--NOTICE OF CONFIDENTIAL SETTLEMENT AGREEMENT	04/19/2018
<a href="#">20184-142136-02</a>	PUBLIC	08-573	<input type="checkbox"/>	WS	WISCONSIN POWER AND LIGHT COMPANY	LETTER--NOTICE OF CONFIDENTIAL SETTLEMENT AGREEMENT	04/19/2018

that there are environmental impacts and issues that demand attention. The Commission's failure to conduct iterative, critical, and public analysis sufficient to prevent impacts is abdication of its duty to the public.

42. MEPA requires an environmental document that:

... describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement must also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented.

Minn. Stat. §116D.03, Subd. 2a.

43. Information provided by an applicant in an application is not environmental review.

Information provided by an applicant does not meet the requirements of the Minnesota Environmental Policy Act.

44. Failure to conduct environmental review for Large Wind Energy Conversion Systems is a violation of the Minnesota Environmental Policy Act's requirements for environmental review.

## COUNT TWO

### **FAILURE TO DEVELOP AND UTILIZE CRITERIA AND RULES FOR SITING LARGE WIND ENERGY CONVERSION SYSTEMS VIOLATES MINNESOTA ENVIRONMENTAL LAW**

45. Each of the paragraphs and foregoing allegations above are repeated and realleged as if fully related herein.

46. The legislature mandated development of rules regarding siting and environmental review of Large Wind Energy Conversion Systems, specifically "criteria that the commission shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment," and "requirements for environmental review of the LWECS. Minn. Stat.

§216F.05.

47. Rather than develop rules regarding siting and environmental review, the rule promulgated states, ““No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.” Minn. R. 7854.0500, Subp. 7.

48. Over the last three years, AFCL has availed itself of administrative options as an active public participant in the Freeborn Wind Project administrative permitting process as an intervenor, a petitioner for contested case and advisory task force, comments, rulemaking petition, and other participatory options. AFCL members and local residents intervened and participated in the Freeborn Wind Project siting and transmission line proceedings at the Public Utilities Commission, PUC Dockets IP6946/WS-17-410 and IP6949/TL-17-322. AFCL has also participated in many meetings at Freeborn County and at the Towns of Shell Rock, London, Oakland, and Hayward, the four affected townships. Approximately 480 residents and landowners within the Freeborn Wind footprint have signed a petition opposing the Freeborn Wind project, which has been filed in the Freeborn Wind project docket at the Public Utilities Commission. Other members of the public have participated actively in wind siting dockets to the utmost of their ability.

49. Wind siting statutes are found under a chapter separate from the Power Plant Siting Act, and wind projects are exempt from some, but not all, provisions of the Power Plant Siting Act. See Minnesota Statutes Chapter 216F, and exemptions under Minn. Stat. §216F.02.

50. Despite the exemptions, many of the Power Plant Siting Act provisions are expressly applicable. Minn. Stat. §216F.02. The applicability of parts of the Power Plant Siting Act has been ignored until the Freeborn Wind siting docket, which was referred to the Office of Administrative Hearings for a contested case.



51. Although a statute passed in 1995 required rules be developed regarding wind siting and environmental review, the mandate to develop rules regarding siting and environmental review has been only nominally fulfilled, where “rules” were promulgated, but there are no rules with siting guidance and no rules setting out environmental rules. Minn. Stat. §216F.05; Minn. R. Ch. 7854.

52. The Statement of Need and Reasonableness (SONAR) for the wind rulemaking dismissed concerns of impacts and did not develop wind rules, instead declaring that no environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project:

The analysis of the environmental impacts required by this subpart satisfies the environmental review requirements of chapter 4410, parts [7849.1000](#) to [7849.2100](#), and Minnesota Statutes, chapter 116D. **No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.**

Minn. R. 7854.0500, Subp. 7 (emphasis added).

53. Small wind siting standards were developed in 2007-2008 for projects under 25 MW.<sup>13</sup> In siting Large Wind Energy Conversion Systems (LWECS), the Commission, and its agent, Commerce-EERA, have routinely improperly utilized the small wind siting standards, in particular the setbacks measured in turbine rotor diameter, setbacks from roads, etc.<sup>14</sup>

54. Shortly after acceptance of an application, a draft site permit is issued as provided by Procedural rule. The draft site permit is a template establishing terms and conditions for the project. The terms of the draft site permit, and ultimately the site permit, are arbitrary, not based on siting rules or standards. One specific term of the permit, for example, is the setback distance

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<sup>13</sup> See Order Establishing Wind Permit Standards, PUC Docket M-07-1102 (PUC #[4897855](#)).

<sup>14</sup> Id., see chart, Exhibit A (beginning p. 8 of 28).

of turbines, a 1,000 foot distance in the permit template, but the setbacks have no regulatory, scientific or legal basis for that setback distance.

55. Interested parties have filed multiple rulemaking petitions for wind specific criteria and rules for siting and environmental criteria, rules, and requirements for review, these petitions were rejected, and to this day, no “Large Wind” siting criteria, siting rules, or environmental review rules have been promulgated for the siting of wind projects. Minn. Stat. §216F.05; see e.g. PUC Docket E999/R-18-518.

56. The repeated failure to promulgate wind siting criteria and siting rules, first by the Environmental Quality Board and then the Public Utilities Commission, despite a clear legislative mandate and multiple wind rulemaking petitions, is contrary to the legislative mandate and the Minnesota Environmental Policy Act. Decades later, when a community is confronted with a project, the burden shifts to the public to address this failure.

57. The Commission’s failure to promulgate siting criteria and siting rules, its procedure and process, review, and siting of Large Wind Energy Conversion Systems is a violation of the Minnesota Environmental Policy Act and the mandate of Minn. Stat. §216F.05.

### **COUNT THREE**

#### **FAILURE TO PROVIDE STATUTORILY REQUIRED PUBLIC PARTICIPATION AND EXCLUSION OF THE PUBLIC IS VIOLATION OF ENVIRONMENTAL LAW**

58. Each of the paragraphs and foregoing allegations above are repeated and realleged as if fully related herein.

59. The Power Plant Siting Act is well-established as environmental law, and site permits issued must comply with MEPA and MERA. Minn. Stat. Ch. 216E – Power Plant Siting Act; see *People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council*, 266 N.W. 2d 858 (Minn. 1978).

60. Public participation is to be the Public Utilities Commission's principle of operation.

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. The Public Utilities Commission is not exempted from this public participation mandate by the exemptions of the Wind Energy Conversion Systems chapter, and instead, the public participation mandate expressly applies. Minn. Stat. §216F.02.

61. The Freeborn Wind siting docket was the first siting docket ever referred to Office of Administrative Hearings for contested case review of the full site permit application in the 20+ year history of wind siting in the state of Minnesota<sup>15</sup>. This was also the first case where an Administrative Law Judge recommended the site permit be denied.

62. Requests for a contested case had been made previously in other wind siting dockets, but this was the first instance where a wind siting docket was referred for a contested case by the Public Utilities Commission or the Environmental Quality Board before it. This contested case for the Freeborn Wind Project, and use of Power Plant Siting Act as applicable, was requested by AFCL and others, and agreed to by the Applicant, a first in Minnesota.

63. Intervenors have requested and been admitted as parties in only a few dockets, including Freeborn Wind, Kenyon Wind, Goodhue Wind, and Buffalo Ridge. Members of the public do comment in most, if not all, of the wind siting dockets before the Commission.

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<sup>15</sup> Two contested cases have been held on discrete, narrow issues in two dockets, the Goodhue Wind siting docket regarding whether County ordinance applied under Minn. Stat. §216F.081 (PUC Docket IP-6701/WS-08-1233); and a land-leasing exclusivity claim where there were competing interests in overlapping project footprints in one of the first siting dockets in the mid-1990s.

64. Multiple requests have been made for an Advisory Task Force, as provided for in the Power Plant Siting Act, in siting dockets for various wind projects. An Advisory Task Force would consider siting impacts and environmental issues. All of these requests for Task Forces were denied. See Minn. Stat. §216E.08.

65. The Public Utilities Commission's public engagement process was the subject of a complaint to the Office of Legislative Auditor (OLA). Per the OLA website, "[t]he Program Evaluation Division is completing an evaluation of [Public Utilities Commission Public Participation Processes](#).<sup>16</sup>

66. The Commission's initial permitting order in the Freeborn Wind docket adopted some of the ALJ's Findings as Findings of the Commission in its Order of December 19, 2018, with the Commission deleting part of one finding, and adding public process to another:

**Finding 243**

Should the Commission choose to do so, it could provide Freeborn Wind with an opportunity to submit a plan demonstrating how it will comply with Minnesota's noise standards at all times throughout the footprint of the Freeborn Wind Project. ~~The plan should include low frequency noise measurements for evaluation in consultation with MDH.~~

**Finding 244**

The Administrative Law Judge further recommends that the plan be made available for public and agency comment ~~and a hearing held with a summary report~~. The Commission should then review and approve a pre-construction noise mitigation plan that best assures that turbine noise will not cause noise levels that exceed Minnesota's noise standards.

Order, December 19, 2018<sup>17</sup>.

<sup>16</sup> See <https://www.auditor.leg.state.mn.us/announce/puc.pdf>.

<sup>17</sup> MPCA Noise Standard: Minn. R. 7030.0400, Subd. 4. PUC Order, from PUC's eDockets:

<a href="#">201812-148595-01</a>	PUBLIC	17-410	<input type="checkbox"/>	WS	PUC	ORDER--ORDER ISSUING SITE PERMIT AND TAKING OTHER ACTION	12/19/2018
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67. The Commission made permitting decisions in the subsequent Freeborn Wind permit transfer docket and the Xcel Energy siting docket, decisions regarding Environmental Review and the Amended Permit without a hearing before an Administrative Law Judge and there was no ALJ summary report, contrary to the Commission adopted Findings of Fact 243 and 244.

68. Further limiting public participation, without a hearing, there was no opportunity to vet and address any issues with the filings, and the information missing in the application was allowed by the Commission to be provided by the applicant as compliance filings after a site permit was issued, with no opportunity for vetting, review, and comment. Permitting was taken from public view and handled behind closed doors of the Dept. of Commerce-EERA and the Commission through these “compliance filings” and at private “pre-construction” meetings<sup>18</sup>.

69. Multiple requests were made for notice to parties and the public and participation opportunities, but no notice was provided, and the public and parties were excluded from “pre-construction” meetings. AFCL is an intervenor in the Freeborn docket with full party status and three (3) years of participation in the dockets, yet is left in the dark despite numerous requests for notice.

70. In another move shutting out the public, noise studies for at least two wind projects, Blazing Star (WS-16-686) and Plum Creek (WS-18-700) were filed by the developer as “TRADE SECRET” with the sound power level maximums of the turbines used redacted. The filings were labeled “TRADE SECRET” but the documents did not set out sections which were redacted. Some are obviously blank, but it is impossible to tell what is redacted<sup>19</sup>. Notably both of these projects utilize the absurd ground factor of 0.7, and with TRADE SECRET designation,

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<sup>18</sup> For example, pre-construction meetings were organized and held by Commerce-EERA were held November 25, 2019 and May 13, 2020, with no notice to AFCL.

<sup>19</sup> See Blazing Star December 6, 2016 filings: [201612-127040-04](#) and TRADE SECRET 201612-127040-02.

the noise studies are not open for public scrutiny, leading to an inference that they cannot meet the state MPCA's noise standard. Minn. R. 7030, Subp. 4

71. The TRADE SECRET designation of noise studies was challenged on December 15, 2019, by AFCL counsel. Ryan Barlow, PUC General Counsel replied over five months later, retaining the Trade Secret designation for all but a minor filing. There has been no response regarding the Plum Creek Wind Project. A public information meeting on the Plum Creek Wind Project is being held by Commerce-EERA 6 days from now.

72. Noise of wind turbines has been demonstrated to be a problem. As above, the Commission has active and constructive notice of noise exceedences, and Commerce-EERA has, through consultants, conducted noise monitoring demonstrating exceedences. The public cannot adequately address the potential for noise impacts where this information is hidden.

73. The Commission's public engagement policies and process is to exclude parties, to shuffle provision of crucial, determinative, information into post-permitting private meetings, particularly when the information being hidden is detrimental to the Commission's rationalizations for issuing the permit. This is contrary to the Commission's public participation policy of operation. Minn. Stat. §216E.08.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court enter judgment:

1. Declaring that the conduct by the Commission, and its agent, Department of Commerce, in permitting the Freeborn Wind Project, in failing to promulgate siting rules and standards specific to LWECS, is in violation of the Minnesota Environmental Rights Act and Minnesota Environmental Policy Act and the specific directive of Minn. Stat. §216F.05.

2. Declaring that the conduct by the Commission, and its agent, Department of Commerce, in permitting the Freeborn Wind Project, in failing to conduct environmental review in the form of an Environmental Impact Statement, is in violation of the Minnesota Environmental Rights Act and Minnesota Environmental Policy Act.
3. Declaring that the conduct by the Commission, and its agent, Department of Commerce, in permitting any Large Wind Energy Conversion System, using small wind siting standards for projects 25 MW or less, is in violation of the Minnesota Environmental Rights Act and Minnesota Environmental Policy Act.
4. Declaring that the conduct by the Commission, and its agent, Department of Commerce, in failing to provide statutorily required public participation and failing to provide public process, is in violation of Minn. Stat. §216E.08, the Minnesota Environmental Rights Act, and Minnesota Environmental Policy Act.
5. Declaring that the conduct by the Commission, and its agent, Department of Commerce-EERA, in finding an application complete and granting a permit without provision of all information required by rule, and granting permit without requiring this information, instead allowing applicant to provide it after permit has been granted, beyond public view and without public review, is in violation of Minn. R. 7854.0500, Minn. Stat. §216E.08, the Minnesota Environmental Rights Act and Minnesota Environmental Policy Act.
6. Declaring that the conduct by the Commission, and its agent, Department of Commerce, in finding application complete, issuance of a draft permit or issuance of a permit amendment, without ambient noise modeling studies, failing to require

- provision of noise modeling demonstrating probable compliance, giving noise studies TRADE SECRET designation, and granting permit without demonstration of compliance with state noise standards, is in violation of the Minnesota Environmental Rights Act and Minnesota Environmental Policy Act.
7. Enjoining the Public Utilities Commission, and its agent, Department of Commerce, from permitting siting and construction of the Freeborn, Plum Creek, Buffalo Ridge, and Three Waters wind projects until wind siting criteria and rules have been promulgated, and until the above violations have been corrected, to prevent irreparable injury to the air, water, land, or other natural resources located within the area of these wind projects;
  8. Awarding costs and expenses of this action, including reasonable attorneys' fees to Plaintiffs; and
  9. Granting of such other relief as the Court deems just, equitable, and proper.

June 10, 2020



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**ACKNOWLEDGEMENT**

The Plaintiff, Association of Freeborn County Landowners, by its undersigned attorney, hereby acknowledges that, pursuant to Minn. Stat. §549.211, Subd. 1. that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a frivolous claim or defense, asserted an unfounded position solely to delay or harass, or committed a fraud upon the court.

June 10, 2020



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