

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

In the Matter of the Complaint of the
Association of Freeborn County
Landowners

**INVESTIGATIVE REPORT PURSUANT
TO MINN. STAT. § 216A.037**

This matter is pending before Administrative Law Judge Jessica A. Palmer-Denig pursuant to a referral by the Minnesota Public Utilities Commission (Commission), filed with the Office of Administrative Hearings on August 12, 2020.

The Commission requested the assignment of an administrative law judge to conduct a hearing investigation and issue an investigative report pursuant to Minn. Stat. § 216A.037, subd. 4 (2020). The investigation relates to the Complaint of Violation of Commissioner Code of Conduct Rules (Complaint) filed by the Association of Freeborn County Landowners (AFCL) on August 3, 2020. The Complaint alleges violations of the Commission's prohibition of ex parte communications and other violations of the Commission's code of conduct under Minn. Stat. § 216A.037, subds. 1, 3 (2020); Minn. R. 7845.0100-.1000, .7000-.7900 (2019), by Commission Chair Katie Seiben and Commissioner John Tuma.

Carol A. Overland, Legalectric, Inc., represents AFCL. Chair Sieben and Commissioner Tuma jointly responded to the Complaint, without legal counsel.

Based upon the files and records in this matter, and for the reasons identified in this Investigative Report and accompanying Memorandum,

IT IS HEREBY DETERMINED THAT:

1. Chair Sieben's conduct did not violate the Commission's code of conduct.
2. Chair Sieben did not engage in prohibited ex parte communications as alleged in the Complaint.
3. Commissioner Tuma's conduct did not violate the Commission's code of conduct.
4. Commissioner Tuma did not engage in prohibited ex parte communications as alleged in the Complaint.

IT IS HEREBY RECOMMENDED THAT:

The Commission should **DISMISS** the Complaint without taking further action.

Dated: September 11, 2020



JESSICA A. PALMER-DENIG
Administrative Law Judge

INVESTIGATIVE FINDINGS

I. Background

1. On June 15, 2017, Freeborn Wind Energy, LLC (Freeborn Wind) filed a site permit application for a large wind energy conversion system in Freeborn County, Minnesota (Application)¹

2. On August 31, 2017, the Commission referred the matter to the Office of Administrative Hearings for a contested case proceeding regarding the merits of the Application.²

3. AFCL filed a Petition for Intervention in the proceeding on September 1, 2017, seeking to participate in the matter as a party.³ An Order Granting Intervention to Association of Freeborn County Landowners, granting AFCL party status, was issued on September 12, 2017.⁴

4. Administrative Law Judge LauraSue Schlatter held a contested case hearing on February 21 and 22, 2018, in which AFCL participated, and on May 14, 2018, Judge Schlatter issued her Findings of Fact, Conclusions of Law, and Recommendations.⁵

5. On December 19, 2018, the Commission issued an Order Issuing Site Permit and Taking Other Action, approving the Application with modifications.⁶

¹ Initial Filing – Freeborn Wind Farm Site Permit Application (June 15, 2017) (eDocket No. 20176-132804-01).

² Order Finding Application Complete and Varying Time Limits, Notice and Order for Hearing (Aug. 31, 2017) (eDocket No. 20178-135140-01).

³ Petition for Intervention (Sept. 1, 2017) (eDocket No. 20179-135229-01).

⁴ Order Granting Intervention to Association of Freeborn County Landowners (Sept. 12, 2017) (eDocket No. 20179-135455-01).

⁵ Findings of Fact, Conclusions of Law, and Recommendations at 1, 119 (May 14, 2018) (eDocket No. 20185-143018-01) (filed as one of a series of documents); Findings of Fact, Conclusions of Law, and Recommendations (May 31, 2018) (eDocket No. 20185-143479-02) (filed as a stand-alone document).

⁶ Order Issuing Site Permit and Taking Other Action (Dec. 19, 2018) (eDocket No. 201812-148595-01).

6. Subsequently, on May 10, 2019, the Commission issued an Order Amending Site Permit, noting the filing of requests for reconsideration of its earlier order; this order did not grant those requests, but on its own motion, the Commission reconsidered the original decision and made corrections in the permit language.⁷

7. AFCL filed a request for reconsideration of that Order, which the Commission denied on July 2, 2019.⁸

8. AFCL appealed the Commission's decisions issuing the Amended Site Permit and denying its request for reconsideration.⁹

9. On October 22, 2019, the Commission approved the transfer of the site and route permits for the project from Freeborn Wind to Northern States Power Company, d/b/a Xcel Energy (Xcel).¹⁰

10. AFCL filed an appeal of the Commission's decision made during a meeting on February 6, 2020, to deny AFCL's Petition for an Environmental Assessment Worksheet, but on April 2, 2020, the Court of Appeals dismissed the matter as premature because no final order had been issued.¹¹

11. On March 31, 2020, the Commission issued an order granting Xcel's request for a permit amendment and denying AFCL's request for preparation of an Environmental Assessment Worksheet and Environmental Impact Statement.¹²

12. AFCL appealed Commission's order issued March 31, 2020, and included in the appeal the earlier decision on February 6, 2020, denying AFCL's Petition for an Environmental Assessment Worksheet.¹³

⁷ Order Amending Site Permit (May 10, 2019) (eDocket No. 20195-152849-01).

⁸ Order Denying Reconsideration (July 2, 2019) (eDocket No. 20197-154143-01).

⁹ *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*, No. A19-1195, Petition for Writ of Certiorari (Minn. Ct. App. Aug. 1, 2019).

¹⁰ Order Granting Request to Transfer Site and Route Permits (Oct. 22, 2019) (eDocket No. 201910-156806-02).

¹¹ *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*, No. A20-0410, Petition for Writ of Certiorari (Minn. Ct. App. Mar. 23, 2020).

¹² Order Denying AFCL's Petitioners and Amending Site Permit (March 31, 2020) (eDocket No. 20203-161639-01).

¹³ *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*, No. A20-0947, Petition for Writ of Certiorari (Minn. Ct. App. July 14, 2020).

13. AFCL's pending appeals have been consolidated and are currently before the Minnesota Court of Appeals.¹⁴

14. On June 10, 2020, AFCL brought suit against the Commission in district court under the Minnesota Environmental Rights Act,¹⁵ seeking a temporary injunction of the Freeborn Wind project, as well as other projects, and asking that the Commission be compelled to conduct rulemaking to develop standards regarding environmental impacts of windfarms.¹⁶ This matter also remains currently pending.

II. Complaint of AFCL

15. The Commission has received numerous other filings and requests in this docket, several of which relate to AFCL's Complaint.

16. On April 21, 2020, Sue Madson filed a request for a permit amendment removing two wind turbines located within one half mile from her home, asserting that the permit condition would ensure the continued safe operation of her licensed daycare.¹⁷ The Department of Commerce Energy and Environmental Review and Analysis unit (DOC EERA), Xcel, AFCL, and other commenters filed comments regarding the amendment request.¹⁸

17. On July 2, 2020, the Commission issued a Notice of Commission Meeting setting an agenda meeting, using remote access only, for July 16, 2020, in which it would take up Ms. Madson's request.¹⁹ The decision item posed was: "What actions should the Commission take regarding the April 21, 2020 Request to Amend the Site Permit with a Special Condition?"²⁰ Commission staff issued briefing papers on June 4, 2020, agreeing with the DOC EERA and Xcel.²¹

¹⁴ *In the Matter of Freeborn Wind Energy LLC's Application for a Large Wind Energy Conversion System Site Permit for the 84 MW Freeborn Wind Farm in Freeborn County*, No. A20-0947, Order (Minn. Ct. App. July 16, 2020).

¹⁵ Minn. Stat. §§ 116B.01-13 (2020).

¹⁶ *Association of Freeborn County Landowners v. Minnesota Public Utilities Commission*, No. 62-CV-20-3674, Summons and Complaint (Minn. Dist. Ct. June 10, 2020); Courtesy Copy – Summons and Complaint (June 29, 2020) (eDocket No. 20206-164310-02).

¹⁷ Comments - Request for a Special Condition to Amended Permit and Official Complaint (Apr. 21, 2020) (eDocket Nos. 20204-162250-02; 20204-162250-01; 20204-162243-06; 20204-162243-05; 20204-162243-04; 20204-162243-03; 20204-162243-02; 20204-162243-01; 20204-162663-01); See also Reply Comments (June 4, 2020) (eDocket No. 20206-163742-01).

¹⁸ See Comments and Recommendations (May 28, 2020) (eDocket No. 20205-163561-01); Reply Comments on Madson Site Permit Amendment Request (June 4, 2020) (eDocket No. 20206-163710-01); Comments and Documents in Support of the Adoption of a Special Condition (May 21, 2020) (eDocket Nos. 20205-163387-01; 20205-163384-01); Comments (May 21, 2020) (eDocket No. 20205-163405-01); Reply Comments (June 5, 2020) (eDocket No. 20206-163774-01).

¹⁹ Notice of Commission Meeting (July 2, 2020) (eDocket No. 20207-164587-01). The notice advised that the meeting would be held using remote access only, via WebEx, due to guidance from the Minnesota Department of Health regarding social distancing and in compliance with Executive Order 20-20, which directed Minnesotans to stay at home. See *id.*

²⁰ *Id.*

²¹ Briefing Papers (June 4, 2020) (eDocket No. 20206-163726-01).

18. In the meantime, on June 26, 2020, AFCL filed a Motion for Order to Show Cause and Hearing (Motion), stating that Xcel had removed 17 turbines from the layout of the project. It asserted that this constituted a material change from the project approved by the Commission. It requested that the Commission require Xcel to disclose its revised plan and file a stand-alone application for a permit amendment, which AFCL maintained should be referred to the Office of Administrative Hearings for a contested case proceeding.²²

19. Xcel filed a response by letter dated July 10, 2020, confirming that it would move 17 turbines originally planned for installation in Freeborn County to Iowa instead.²³ Xcel indicated it decided to move the turbines after having difficulties obtaining agreements with Oakland and London Townships for its use of township roads related to turbine construction.²⁴ In particular, Xcel maintained that Freeborn Wind believed that local ordinances regarding road use were preempted by Minn. Stat. § 216F.07, but still attempted in good faith to negotiate agreements. Xcel noted the Application indicated that the project developer would need to obtain “oversize/overweight permits for township roads,” and that London and Oakland Townships shortly thereafter adopted ordinances requiring environmental review of such permits. Xcel reported that Freeborn Wind sought permits and submitted environmental review documentation, but the townships had not considered the applications.

20. Xcel indicated that when it took over the project it also sought to negotiate with the townships, but it was accused of harassment. Xcel concluded it would be unable to work constructively with the townships to obtain agreements or permits. It began to develop a backup plan to move the turbines that would have been built in those townships to Iowa, where additional turbines will already be located. Xcel noted that it had notified the DOC EERA of its backup plan, and once it had determined it was required to change its original plan, it notified the DOC EERA, Commission staff, Freeborn County officials, and affected landowners.²⁵ In sum, Xcel maintained that this change did not impact the remainder of the project and that no permit amendment was required.²⁶

21. At this time, AFCL’s Motion remains pending and has not been scheduled for further proceedings before the Commission.

²² Motion for Order to Show Cause and Hearing (June 26, 2020) (eDocket No. 20206-164298-01); see also Corrected Motion for Order to Show Cause and Hearing (June 29, 2020) (eDocket No. 20206-164311-01).

²³ Response in Opposition to AFCL’s Motion for Order to Show Cause and Hearing (July 10, 2020) (eDocket No. 20207-164813-01).

²⁴ *Id.* at 1-2.

²⁵ *Id.* at 3.

²⁶ *Id.* at 1.

22. The docket in this matter contains numerous complaints and requests related to construction traffic on roads, signage, and allegations of trespassing beyond the right of way.²⁷

23. On July 15, 2020, the day before the Commission's July 16, 2020, agenda meeting, additional briefing papers were filed by the Commission.²⁸ The briefing contained the designation "Decision Options," and the document stated:

Commissioner Tuma moves the following decision option:

E. Take some other action deemed appropriate.

2. The Executive Secretary shall provide notice and request comment as to whether the Commission should amend the permit authorizing Permittee access to the public roads within the Townships of Oakland and London subject to the provisions of the Freeborn County Development Agreement (filed March 11, 2020, PUC Document 20203-161121-01) and, upon agreement of the Freeborn County, appoint the Freeborn County Engineer to act as the agent and representative regarding the appropriate arrangements for access road requirements, construction use of roads, maintenance and repair due to the increased impacts from transportation of equipment and project components over the township roads in the Townships of Oakland and London for the duration of the project. The Permittee may continue in all other respects with preconstruction and construction activities under the permit as if there were the establishment of satisfactory arrangements for road mitigations in Oakland and London Townships through this amendment process so long as there is no activity on the affected township roads until the conclusion of this amendment process.²⁹

24. AFCL objected to the decision option and demanded that it be removed from consideration.³⁰ London and Oakland Townships also objected to the proposed decision option, calling it a "power grab" by the Commission.³¹ The townships stated that the "mere consideration of [Commissioner Tuma's] request by [the Commission] signals a disturbing policy by the Commission which will lead to a 'slippery slope' which threatens local regulatory powers of all Counties, Cities and Townships in Minnesota."³²

²⁷ See, e.g., Letters Regarding Construction Traffic (July 6, 2020) (eDocket Nos. 20207-164644-01; 20207-164645-01); Letter Regarding Trespassing (July 6, 2020) (eDocket No. 20207-164652-02); Letter Regarding Removal of No Construction Sign (July 6, 2020) (eDocket No. 20207-164653-01).

²⁸ Briefing Papers – July 16, 2020 Agenda - Decision Options (July 15, 2020) (eDocket No. 20207-164936-01).

²⁹ *Id.*

³⁰ Letter – Demand to Remove Last Minute Tuma Decision Option (July 15, 2020) (eDocket No. 20207-164982-01).

³¹ Public Comment – Letter from London and Oakland Townships (July 16, 2020) (eDocket No. 20207-164993-01).

³² *Id.*

25. The Commission convened the agenda meeting on July 16, 2020.³³ During the meeting, Commissioner Tuma asked to address the decision option, noting that he was unsure if he would offer it for consideration, and indicated he wished to ask Xcel some additional questions.³⁴ Chair Sieben recognized Commissioner Tuma and stated he should proceed.

26. Commissioner Tuma addressed the conflicts regarding construction traffic and road usage issues, and speaking specifically to Xcel's representative, expressed concern that Xcel had not approached the Commission regarding these problems, and that language in the Site Permit played a role in developing the issue. Commissioner Tuma also noted his concern that, with turbine locations moving to another state, some of the wind farm's economic benefits to local governments would be lost.³⁵ Commissioner Tuma asked Xcel whether there was any possibility of resolving the road issues, possibly through preemption of local regulations, such that Xcel would reconsider moving the turbines.³⁶ Xcel answered that it would move forward with moving the turbines, noting the timeframe for the project and the relative ease of siting turbines in Iowa due to its county-level approval process.³⁷

27. During the discussion, Commissioner Tuma referenced Xcel's letter brief in opposition to AFCL's Motion, stating at various points during the discussion:

[T]his is the only opportunity I have to put Mr. Harris [Xcel's representative] on the spot to talk about these things in his July 10 letter;³⁸

I appreciate the very difficult job, as has been evident just by the response to my inquiry about just a notice to possibly consider this concept of preemption that you raised in your July 10 letter;³⁹

[Y]ou mentioned in the July letter that you had considered preemption and you thought you'd be successful, why didn't you consider making a motion in front of us?⁴⁰

28. Commissioner Tuma also referenced arguments made by counsel for London and Oakland Townships in discussing the preemption issue, stating:

Again, no commissioner's [sic] worked harder to get local units of government involved in this process, so I don't want that to be misinterpreted here. I take a little bit of umbrage to the fact that people are

³³ Partial Transcript (Tr.) of PUC Proceedings (July 16, 2020) (eDocket No. 20207-165468-01).

³⁴ *Id.* at 2.

³⁵ *Id.* at 7.

³⁶ *Id.* at 9.

³⁷ *Id.* at 11, 19, 20.

³⁸ *Id.* at 6.

³⁹ *Id.*

⁴⁰ *Id.* at 13.

planning, they're speaking for the township association when, in fact, they don't, they speak for two townships. But I also want to take those two townships' concerns considered completely. There is no predetermination here, there is only a question is there authority here that we're not using to make sure the full benefits of this program can move forward.⁴¹

29. Commissioner Tuma noted that the township roads at issue were public roads, and that he had driven on them the weekend before the agenda meeting.⁴² He noted that, as public roads on which anyone could drive, Xcel's vehicles could traverse these roads so long as the vehicles were not overweight.⁴³ Commissioner Tuma noted that neither of the townships at issue had a police force, and that Xcel could drive vehicles on the roads unless the townships raised the issue in court, but he indicated that circumstance would lead to uncertainty.⁴⁴

30. In discussing the economic benefits of the project, Commissioner Tuma stated:

To your point about the economic development, I know for in [sic] fact Freeborn County was going to use the money generated from this particular project to be the fiscal backup for a COVID business recovery program they had in their county. And so now it's going to be impaired because of the loss of these turbines, so that's a sad situation for Freeborn County and it's sad for Minnesota, I think.⁴⁵

31. Chair Sieben also addressed Xcel, noting financial figures for revenues to local governments attributable to the project, and asked whether Xcel was committed to moving forward with construction as the other turbines for the project. Xcel responded that it was committed to construction of the remaining turbines in Minnesota.⁴⁶

32. As this discussion progressed, AFCL's counsel was observing the meeting and communicated several times with the meeting operator to voice written objections, which the operator indicated were passed to Chair Sieben.⁴⁷

33. Ultimately, Commissioner Tuma never formally offered his decision option for a vote, the Commission did not make any decision or issue any order related to the topics discussed with Xcel, and it did not notice any comment period related to the issues raised.⁴⁸

⁴¹ *Id.* at 9.

⁴² *Id.* at 5.

⁴³ *Id.*

⁴⁴ *Id.* at 15-16.

⁴⁵ *Id.* at 21-22.

⁴⁶ *Id.* at 16-17.

⁴⁷ Complaint at 13 (Aug. 3, 2020) (eDocket No. 20208-165566-02).

⁴⁸ See Tr. at 22-23.

34. AFCL filed its Complaint asserting that Chair Sieben and Commissioner Tuma violated the Commission's prohibition on ex parte communications and Code of Conduct in connection with the agenda meeting.⁴⁹

35. As to Chair Sieben, AFCL contends that she violated ethical standards during the Commission agenda meeting by:

- a. Permitting Commissioner Tuma to address the proposed decision option rather than by requiring the Commission's discussion to pertain only to Ms. Madson's request for a permit amendment, in violation of Minn. R. 7829.0140, .2800 (2019);
- b. Giving Xcel preferential treatment to the detriment of local governments and an intervenor party, thereby losing impartiality in violation of Minn. R. 7845.0400;
- c. Displaying personal bias and demonstrating an interest, other than that of the general public, that could be substantially affected by the outcome of a proceeding, in violation of Minn. R. 7845.0600; and
- d. Engaging in ex parte communications by having discussions with only one party during the Commission meeting, in violation of Minn. R. 7845.7000, .7200, subp. 1(A).⁵⁰

36. As to Commissioner Tuma, AFCL maintains that he violated ethical standards by:

- a. Offering the decision option for discussion without complying with the notice and service requirements for motions made to the Commission, violating Minn. R. 7829.0140, .2800;
- b. Making "demonstrably false" statements during the Commission meeting regarding the client representation of the attorney for London and Oakland Townships and by referencing Freeborn County's use of funds generated from the wind farm project to fund a business recovery program related to the impacts of COVID-19, in violation of Minn. R. 7829.0250 (2019);

⁴⁹ Complaint.

⁵⁰ *Id.* at 2-3.

- c. Giving preferential treatment to Xcel over the interests of local governments and a party, thereby losing impartiality, in violation of Minn. R. 7845.0400;
- d. Displaying personal bias concerning a party and demonstrating an interest, other than that of the general public, that could be substantially affected by the outcome of a proceeding, violating Minn. R. 7845.0600;
- e. Engaging in discussions with Xcel regarding a topic addressed in AFCL's Motion, without an opportunity for AFCL to participate, which constituted an ex parte communication with Xcel, in violation of Minn. R. 7845.7000, .7200, subp. 1(A); and
- f. Possibly having additional improper contact with Freeborn County officials or project representatives off the record because he noted driving the local roads himself and referenced Freeborn County's COVID-19 business recovery program, violating Minn. R. 7845.7000, .7200, subp. 1(A).

37. AFCL contends that both Chair Sieben and Commissioner Tuma engaged in actions that adversely impacted the confidence of the public in the Commission's integrity, blatantly disregarded the Commission's principle of broad public participation in matters before it, and had the appearance of impropriety, violating Minn. Stat. § 216E.08, subd. 2 (2020) and Minn. R. 7845.0400.⁵¹

38. AFCL proposes that Chair Sieben and Commissioner Tuma should be sanctioned. AFCL also requests issuance of a recommendation that its Motion should be granted, and that Xcel should be ordered to submit a stand-alone application for a permit amendment regarding siting.

III. Response of Chair Sieben and Commissioner Tuma

39. Chair Sieben and Commissioner Tuma submitted a joint Answer to the Complaint, filed on August 10, 2020, seeking dismissal of the Complaint.⁵²

40. Chair Sieben and Commissioner Tuma argue that the Complaint is procedurally improper because it does not identify a violation of the rules regarding ex parte communications; they assert that the procedure under Minn. Stat. § 216A.037 is reserved for ex parte violations and is not otherwise available as a mechanism to address Code of Conduct violations.⁵³

⁵¹ *Id.* at 3-4.

⁵² Answer to Complaint of Violation (Answer) (Aug. 10, 2020) (eDocket No. 20208-165723-01).

⁵³ *Id.* at 3; Meeting Procedures (submitted as an attachment to the Answer).

41. Chair Sieben and Commissioner Tuma also assert that:
- a. There is no notice and service requirement for a commissioner to raise an issue for discussion or move for a vote and the discussion was consistent with the Commissions formal Meeting Procedures;⁵⁴
 - b. The Commission was not required to take up AFCL's Motion before discussing the status of Xcel's decision to move turbines or to consider instituting a notice and comment period related to that issue;⁵⁵
 - c. They did not discount party or public participation, or thwart public participation, by discussing an issue without seeking AFCL's participation or by considering the option of opening a comment period to obtain public participation;⁵⁶
 - d. They did not engage in an ethical violation by usurping "local control" by the Townships over township roads;⁵⁷
 - e. Commissioner Tuma did not engage in prohibited ex parte communications or make false statements regarding the topics discussed at the agenda meeting;⁵⁸ and
 - f. Neither Chair Sieben, nor Commissioner Tuma, demonstrated bias by discussing legal issues with Xcel or by discussing the economic benefits to Freeborn County that accompany the wind farm project;⁵⁹

42. Commissioner Tuma submitted a sworn affidavit addressing specific aspects of the Complaint related to him.⁶⁰

43. Commissioner Tuma's practice is to visit areas in which the Commission is asked to site projects to better understand impacts to each particular community. He drove the county and township roads that have been the subject of contention in the Freeborn Wind docket shortly before the agenda meeting on July 16, 2020. He did not meet with or speak to anyone regarding issues in the docket. Commissioner Tuma's

⁵⁴ *Id.* at 4.

⁵⁵ *Id.* at 5.

⁵⁶ *Id.* at 5-7.

⁵⁷ *Id.* at 6.

⁵⁸ *Id.* at 7-8.

⁵⁹ *Id.* at 8-9.

⁶⁰ Affidavit (Aff.) of John Tuma (Tuma Aff.) (Aug. 7, 2020).

wife shopped at a quilt store while he drove around the neighborhood, but she did not mention why they were in the community.⁶¹

44. Commissioner Tuma participated as a guest speaker at a meeting of the Minnesota Rural Energy Board on June 1, 2020, at which Commissioner Glen Mathiason, the Chair of the Board of Commissioners of Freeborn County, announced that Freeborn County intended to use revenues generated by the Freeborn Wind project to fund economic relief for local communities and businesses impacted by COVID-19.⁶² Commissioner Tuma believed Commissioner Mathiason to be a credible source regarding this information and has no other information on that topic.⁶³

45. Commissioner Tuma later had a follow up conversation with Commissioner Mathiason, which Commissioner Tuma describes as follows:

Some time later, I had a phone conversation with Commissioner Mathiason as a follow-up network chat to the June 1 meeting. To the best of my recollection, this conversation occurred in early July, prior to the July 16, 2020 agenda meeting and after I learned that the Freeborn County road engineer was acting as the overseer of our permit's road conditions.

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

I did not view the conversation as an ex parte communication because Freeborn County is working with us to ensure the permit conditions are met by the permittee, and I knew that Freeborn County was not a party.⁶⁴

46. Commissioner Tuma's conversation with Commissioner Mathiason led Commissioner Tuma to introduce his decision option for the agenda meeting on July 16, 2020, but after learning more, decided not to propose any action for the Commission to take.⁶⁵

⁶¹ Tuma Aff. at ¶ 4.

⁶² *Id.* at ¶¶ 5-6.

⁶³ *Id.* at ¶ 6.

⁶⁴ *Id.* at 2.

⁶⁵ *Id.* at 3.

IV. Incorporation

47. Any fact listed elsewhere in this report that is not specifically identified in the Investigative Findings is incorporated herein.

APPLICABLE LEGAL STANDARDS

I. Statutory Standards

1. Under Minn. Stat. § 216A.037, subs. 1, 3, the legislature directed the Commission to adopt rules regarding permitted and prohibited ex parte communications and to establish a code of conduct.

2. Minn. Stat. § 216A.037, subd. 1(a), provides that:

The ex parte rules may prohibit only ex parte communications, directly or indirectly, between a commissioner and a participant or party under the commission's rules of practice and procedure relating to:

- (1) a material issue during a pending contested case proceeding;
- (2) a material issue in a rulemaking proceeding after the beginning of commission deliberations;
- (3) a material issue in a disputed formal petition; and
- (4) any other communication impermissible by law.

3. The Commission “may apply ex parte prohibitions, prospectively and after notice to affected parties, to other commission proceedings as the commission deems necessary.”⁶⁶

II. Rules on Ex Parte Communications

4. Ex parte communications are governed by Minn. R. 7845.7000-.7900.

5. An ex parte communication is defined as an “oral or written, off-the-record communication made to or by commissioners or commission decision-making personnel, without notice to parties or participants, that is directed to the merits or outcome of an on-the-record proceeding.”⁶⁷

⁶⁶ Minn. Stat. § 216A.037, subd. 1(b).

⁶⁷ Minn. R. 7845.7000, subp. 4.

6. Ex parte communications do not include “procedural, scheduling, and status inquiries or other inquiries or requests for information that have no bearing on the merits or the outcome of the proceeding.”⁶⁸

7. Ex parte communications are permissible except as provided in Minn. R. 7845.7200.⁶⁹

8. The Commission’s prohibition on ex parte communications reads as follows:

An ex parte communication, either direct or indirect, must not be made or attempted to be made between a commissioner and a party or a participant concerning:

- a. a material issue during a pending contested case proceeding, from the date the matter is referred to the Office of Administrative Hearings until the commission issues its final order and the time to petition for reconsideration expires, or until the commission issues a final order responding to the petition for reconsideration, whichever is later;
- b. a material issue in a rulemaking proceeding after the beginning of commission deliberations, from the date the commission posts notice of its deliberations for adoption of rules on the open meeting calendar until the order adopting the rules is issued; or
- c. a material issue in a disputed formal petition.⁷⁰

9. A party is “person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding before the commission. A party includes a petitioner, complainant, intervenor, applicant, and respondent, and their attorneys, agents, or representatives.”⁷¹

10. A participant is “a person who files comments or appears in a proceeding, other than public hearings held in contested cases and other commission proceedings conducted to receive general public comments, to present views without becoming a party.”⁷²

⁶⁸ *Id.*

⁶⁹ Minn. R. 7845.7100.

⁷⁰ Minn. R. 7845.7200, subp. 1.

⁷¹ Minn. R. 7845.7000, subp. 8.

⁷² *Id.*, subp. 7.

11. A material issue is “an issue that may affect the merits or outcome of an on-the-record proceeding.”⁷³

12. The rules define a “disputed formal petition” to include a formal petition: (1) filed with the commission; (2) for which a hearing is not automatically required; (3) for which the commission has received a written statement disputing the action or relief sought in the petition; and (4) on which the commission has ordered comments, written responses to comments, oral argument, negotiations, settlement conferences, a formal hearing, or other procedures it considers necessary or helpful to enable it to decide the petition.⁷⁴

13. A commissioner who intentionally violates the Commission’s ex parte rules must recuse himself or herself and shall not participate, offer advice, or vote in the Commission’s decision-making process in the pending on-the-record proceeding.⁷⁵

III. Rules Comprising the Code of Conduct

14. The Commission has adopted Minn. R. 7845.0100-.1000, to serve as its code of conduct.

15. The purpose of the code of conduct is to “preserve the integrity and independence of commission decision making and to promote public confidence in the objectivity of commission decisions.”⁷⁶ Commissioners are required to maintain high standards of conduct to prevent a conflict, or the appearance of a conflict, between their private interests and official duties.⁷⁷ The code of conduct is to be “construed to secure these objectives in keeping with the quasi-judicial function of the commission.”⁷⁸

16. Pursuant to Minn. R. 7845.0400, subp. 1, commissioners must respect and comply with the law and behave in a manner that promotes the public’s confidence in the integrity and impartiality of the Commission’s decision-making process.

17. Commissioners must avoid any action that creates a conflict of interest or an appearance of impropriety, and specifically must not give preferential treatment to an interested person or entity, lose independence or impartiality of action, or affect adversely the confidence of the public in the Commission’s integrity.⁷⁹

⁷³ *Id.*, subp. 5.

⁷⁴ *Id.*, subp. 2.

⁷⁵ Minn. R. 7845.7600.

⁷⁶ Minn. R. 7845.0300.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Minn. R. 7845.0400, subp. 2(B), (D), (F).

18. Commissioners must disqualify themselves if they have a personal bias or prejudice concerning a party or if they have an interest, other than that of the general public, that could be substantially affected by the outcome of the proceeding.⁸⁰

IV. Complaint and Investigation Process; Potential Sanctions

19. Under Minn. Stat. § 216A.037, subd. 4(a), “[a]ny person seeking sanctions for alleged violations of the rules adopted under this section may file a complaint with the commission.”

20. After a period during which the respondent may file an answer, the Commission is required to refer a complaint and any reply to the Office of Administrative Hearings, after which the assigned administrative law judge must conduct a “hearing investigation” and issue a report within 30 days after the matter is referred.⁸¹

21. The assigned administrative law judge’s findings and decision as to whether ex parte violations occurred are binding on the Commission, and the administrative law judge may also recommend the Commission impose specified sanctions, depending on whether certain conditions are met.⁸²

22. Following the finding of a violation, the Commission may:

- (1) dismiss the proceeding if the prohibited ex parte communication has so prejudiced the proceeding that the commission cannot consider it impartially;
- (2) issue an adverse ruling on a pending issue that is the subject of the prohibited ex parte communication if other parties are prejudiced by the prohibited ex parte communication;
- (3) strike evidence or pleadings if the evidence or pleadings are tainted by the prohibited ex parte communication; or
- (4) issue a public statement of censure, if the prohibited ex parte communication is determined to be part of a continuing pattern of improper ex parte communication or if the prohibited ex parte violation consists of a single prohibited communication and mitigating circumstances exist that:

⁸⁰ Minn. R. 7845.0600, subp. 1(A), (C).

⁸¹ *Id.*, subd. 4(d)-(f). If the administrative law judge determines that the report cannot be properly completed within the initial 30-day time period, the judge shall report that fact to the commission within the 30-day period, and then file a final report within a reasonable time after that and no later than 60 days after the date the matter was referred to the Office of Administrative Hearings. *Id.*, subd. 4(f).

⁸² *Id.*, subd. 4(g)-(h).

- (i) negate the need for a more severe sanction;
- (ii) do not prejudice the proceeding to the extent that the commission is unable to consider it impartially;
- (iii) do not prejudice other parties; or
- (iv) do not taint the evidence or pleadings.⁸³

23. A commissioner who intentionally violates the code of conduct is subject to disciplinary action under Minn. Stat. §§ 15.0575, 43A.33, 216A.036 (2020).⁸⁴

24. If the Administrative Law Judge finds the complaint alleging an ex parte violation “was interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceeding,” the administrative law judge may recommend that the Commission issue an “appropriate sanction” against the complainant.⁸⁵ The statute does not provide any specific sanctions that may be imposed upon such a complainant.⁸⁶

25. The Commission’s ex parte rules also create a complaint process to address complaints of prohibited ex parte communications.⁸⁷ The process under the rules mirrors the process provided by Minn. Stat. § 216A.037, subd. 4.

INVESTIGATIVE CONCLUSIONS

1. Chair Sieben’s conduct during the agenda meeting on July 16, 2020, did not violate the Commission’s code of conduct and there is no evidence that she engaged in prohibited ex parte communications as alleged in the Complaint.

2. Commissioner Tuma’s conduct during the agenda meeting on July 16, 2020, and his conduct pre-dating the meeting described herein, did not violate the Commission’s code of conduct, and there is no evidence that Commissioner Tuma engaged in prohibited ex parte communications as alleged in the Complaint.

3. Any portion of this report, including the reasoning in the Memorandum below, that is properly considered to be an Investigative Conclusion is incorporated herein.

⁸³ Minn. Stat. § 216A.037, subd. 4(h).

⁸⁴ Minn. Stat. § 15.0575, subd. 4, provides for dismissal for cause after notice and a hearing. Minn. Stat. § 43A.33 generally governs proceedings related to employment discipline for employees of the State of Minnesota. Minn. Stat. § 216A.036(d) provides for imposition of a civil penalty of up to \$10,000, for specified appointees, including commissioners of the Commission, who accept employment, compensation, or contract opportunities with certain regulated entities within one year of leaving the appointed post.

⁸⁵ Minn. Stat. § 216A.037, subd. 4(i).

⁸⁶ See *id.*

⁸⁷ See Minn. R. 7845.7700-.7800.

MEMORANDUM

I. Introduction

AFCL's Complaint concerns actions taken by Chair Sieben and Commissioner Tuma on the record at an agenda meeting held by the Commission on July 16, 2020, and some additional actions of Commissioner Tuma's that pre-dated the discussion at the meeting. AFCL alleges that these actions violated the Commission's rules prohibiting ex parte communications and its code of conduct.

II. Scope of Proceeding

Chair Sieben and Commissioner Tuma argue that the process provided in Minn. Stat. § 216A.037, subd. 4, is designed to address only complaints of violations of the rules on ex parte communications, and does not serve as a vehicle for consideration of code of conduct rule violations.⁸⁸ They note that the ex parte rules contain a complaint process, whereas the code of conduct rules do not. The sanctions provisions of Minn. Stat. § 216A.037, subd. 4, also specifically speak of ex parte violations, without referring to code of conduct violations and any appropriate sanctions for such violations.

The Administrative Law Judge concludes that the complaint process under Minn. Stat. § 216A.037, subd. 4, can be used to address complaints alleging code of conduct violations. Minn. Stat. § 216A.037, subd. 1, required the Commission to adopt ex parte rules. Subdivision 3 of the same statute required the Commission to adopt rules establishing a code of conduct. Minn. Stat. § 216A.037, subd. 4(a), then states: "Any person seeking sanctions for alleged violations of the rules *adopted under this section* may file a complaint with the commission."⁸⁹ Both sets of rules were adopted under this statutory section, so a complaint could allege violations of either or both sets of rules. While the code of conduct rules do not contain their own complaint process, the process provided by the statute would apply.⁹⁰

There is some uncertainty in the statute and rules regarding the possible sanctions that could be imposed. The sanctions listed in Minn. Stat. § 216A.037, subd. 4(h) all address ex parte communications, while the code of conduct rules provide for sanctions under Minn. Stat. §§ 15.0575, 43A.33, 216A.036. The Administrative Law Judge determines that it is unnecessary to parse out all possibilities at this time because she concludes no sanctionable conduct occurred.

⁸⁸ Notwithstanding this argument, Chair Sieben and Commissioner Tuma addressed the Complaint's allegations under the code of conduct as well.

⁸⁹ Emphasis added.

⁹⁰ The Administrative Law Judge recognizes that there is a lack of clarity in the statute as it references both sets of rules, but afterward speaks of the "ex parte complaint proceeding," and states that "the report . . . shall set forth the judge's findings as to whether ex parte violations occurred." Minn. Stat. § 216A.037, subd. 4(f)-(g). The Commission may wish to consider whether additional legislation or a rulemaking proceeding would aid in establishing a clearer framework.

Chair Sieben and Commissioner Tuma also acknowledge that there is some uncertainty as to whether the Administrative Law Judge may dismiss the Complaint or whether the matter should be referred to the Commission for dismissal.⁹¹ While the statute makes binding the Administrative Law Judge's findings as to whether ex parte violations occurred, it seems to place the final outcome of the proceeding more clearly in the hands of the Commission.⁹² Therefore, the Administrative Law Judge refers this matter back to the Commission with a recommendation of dismissal.

III. Allegations Regarding Chair Sieben

There is no basis to find that Chair Sieben violated the code of conduct rules or engaged in ex parte communications in connection with the agenda meeting on July 16, 2020.

First, AFCL objects that Chair Sieben allowed Commissioner Tuma to discuss the decision option and to question Xcel when Commissioner Tuma had not filed and served the decision option as a motion and it did not appear as an item for the agenda meeting. AFCL cites several standards in asserting Commissioner Tuma was required to file a motion, and that Chair Sieben should not have permitted his discussion at the agenda meeting without further procedural groundwork. None of these standards require what AFCL proposes.

Under Minn. R. 7829.0410, a "party to a proceeding" may file and serve written motions. A "motion filing" is a written request for a specific action by the Commission filed by a party.⁹³ Minn. R. 7829.2800 contains a general notice requirement indicating that matters may come before the Commission only on ten days' notice to the parties and persons on the official service list, though the executive secretary may reduce the ten-day notice period for exigent circumstances. AFCL also cites Minn. Stat. § 216B.09, subd. 1 (2020), which permits the Commission to act "on its own motion," and AFCL claims that the law does not suspend notice and service requirements for motions by commissioners.⁹⁴ AFCL misreads the requirements and their applicability. Commissioner Tuma's "motion" does not fall within these provisions, but is instead a procedural device used to raise an issue pursuant to the Commission's Meeting Procedures.⁹⁵

AFCL further contends that it was misconduct for Chair Sieben to allow Commissioner Tuma to address questions pertaining to AFCL's Motion when that item was not on the agenda and AFCL could not participate in the discussion. The meeting record does not support that claim. At that point, Xcel had confirmed that it would remove 17 turbines from the project, and Commissioner Tuma's questioning related to the circumstances leading to that decision. He inquired whether there was an alternative

⁹¹ Answer at 3, n.16.

⁹² Minn. Stat. § 216A.037, subd. 4(g)-(h).

⁹³ Minn. R. 7829.0100, subp. 11a (2019).

⁹⁴ AFCL cites Minn. Stat. §§ 216.17, 216B.18, .25 (2020).

⁹⁵ See Meeting Procedures at Section (II)(E)(5).

path forward if the road use issues Xcel encountered could be resolved. Commissioner Tuma did not ask Xcel to address the topics raised in AFCL's Motion, which relate to whether the removal of these turbines constitutes a sufficient change in the scope of the project such that a stand-alone permit amendment application is required. That Commissioner Tuma referenced Xcel's letter submitted in response to AFCL's Motion, in which Xcel confirmed its decision to remove the turbines, does not convert the substance of the discussion into one regarding the Motion. Chair Sieben did not violate the law by allowing Commissioner Tuma to address questions to Xcel.

AFCL next argues that, by permitting the discussion with Xcel and asking Xcel her own questions, Chair Sieben gave preferential treatment to Xcel to the detriment of an intervenor party (AFCL) and local governments (the townships). AFCL argues that Chair Sieben showed a lack of independence and impartiality. AFCL further contends that Chair Sieben displayed personal bias and an interest, other than that of the general public, that could be substantially affected by the proceeding. These allegations are not supported.

Chair Sieben noted the financial benefits to local governments associated with the project and asked whether Xcel would continue construction as to the other turbines in the project. She asked whether there was any aspect of the Commission's process that contributed to Xcel's decision to move the turbines. Her questions were entirely informational and none indicated preference or bias in favor of or against anyone, nor did the questions suggest a lack of independence or impartiality. There is nothing in her discussion with Xcel that suggests she has any personal, financial, or other interest that is impacted by the Freeborn Wind docket as a whole or by any specific proceeding within the docket.

As to ex parte communications, the Complaint alleges that Chair Sieben engaged in misconduct by engaging in a discussion on the record with Xcel, without affording other parties an opportunity to participate, on a matter related to AFCL's pending Motion. As noted previously, the agenda meeting discussion pertained to the removal of the turbines and the circumstances leading Xcel to that decision. The Commission was considering whether to seek additional public comment regarding this issue. There was no discussion of AFCL's Motion and the relief it seeks.

AFCL also did participate in the agenda meeting as an observer,⁹⁶ but AFCL was not entitled to speak at the meeting. The Commission's Meeting Procedures establish that, while it may at times seek public comment at an agenda meeting, absent notice that it will seek such comments "the Commission does not ordinarily accept public comment at the [a]genda meeting."⁹⁷ Additionally, the "Commission reserves the right to limit the amount of time allocated to public comment to assure that it completes its

⁹⁶ Chair Sieben and Commissioner Tuma note that AFCL was given an opportunity to address the Commission during the hearing, but that AFCL did not request or submit a transcript of that portion of the meeting. Answer at 5.

⁹⁷ Meeting Procedures at Section (II)(E)(3).

agenda.”⁹⁸ The docket in this matter shows that AFCL has been an active party and has been able to raise a host of issues for consideration by the Commission. There is no evidence that Chair Sieben or Commissioner Tuma sought to disadvantage AFCL at the agenda meeting.

Finally, AFCL argues that Chair Sieben engaged in actions that adversely impacted the confidence of the public in the Commission’s integrity, blatantly disregarded the Commission’s principle of broad public participation in matters before it, and that these actions gave rise to an appearance of impropriety. These claims are without merit. Chair Sieben permitted and participated in a discussion regarding an issue that had arisen in construction of an approved energy generation project and sought additional information. The purpose of the conversation to which AFCL objects centered on whether to open a comment period to permit further public participation in addressing that issue. Ultimately, Commissioner Tuma did not formally offer his decision option and the Commission did not vote or take any other action related to the issues raised.

There is no support for AFCL’s allegations against Chair Sieben. As to Chair Sieben, the Complaint should be dismissed without further action.

IV. Allegations Regarding Commissioner Tuma

The majority of the Complaint’s claims relate to Commissioner Tuma. Some aspects of the analysis above apply equally to the allegations against Commissioner Tuma. Notably, Commissioner Tuma was not required to frame the decision option in the same manner as a party’s motion and file and serve the decision option according to the Commission’s filing and service rules for motions. It was not a violation of the Commission’s ethical rules for Commissioner Tuma to engage in a discussion with Xcel on the record to receive information about concerns related to a project approved by the Commission and to express concerns about the impact of permitting requirements on the local government. Doing so also did not afford preferential treatment to Xcel, evidence a personal bias, or show that Commissioner Tuma had an interest that could be substantially affected by the proceeding.

There are several other specific allegations related only to Commissioner Tuma. AFCL claims that Commissioner Tuma made “demonstrably false” statements during the agenda meeting. Both of the statements that AFCL identifies as false were tangential to the Commission’s discussion, and neither is a demonstrably false statement.

AFCL maintains Commissioner Tuma mischaracterized the representation by counsel for London and Oakland Townships. Commissioner Tuma remarked: “I take a little bit of umbrage to the fact that people are planning, they’re speaking for the township association when, in fact, they don’t, they speak for two townships. But I also

⁹⁸ *Id.*

want to take those two townships' concerns considered completely.”⁹⁹ This is not a false statement, as Commissioner Tuma noted that the attorneys represented only two townships. To the extent that he characterized their involvement more broadly, the letter filed on behalf of the townships noted that the “mere consideration of [Commissioner Tuma’s] request by [the Commission] signals a disturbing policy by the Commission which will lead to a ‘slippery slope’ which *threatens local regulatory powers of all Counties, Cities and Townships in Minnesota.*”¹⁰⁰

AFCL claims that Commissioner Tuma falsely stated that Freeborn County intended to use funds generated by the Freeborn Wind project to fund economic relief related to the COVID-19 pandemic. Commissioner Tuma avers that he learned this information when it was discussed in public at a meeting by a representative of Freeborn County, and Commissioner Tuma believed it to be true. This statement is not actionable under the Commission’s ethics rules.

AFCL also maintains that Commissioner Tuma engaged in ex parte communications. AFCL points to Commissioner Tuma’s on-the-record discussion with Xcel as an example of an ex parte communication because AFCL argues that Commissioner Tuma discussed its Motion only with Xcel and without allowing AFCL to participate. Commissioner Tuma discussed Xcel’s decision to remove 17 turbines from the Project and sought more information about Xcel’s decision, asking about Xcel’s reasons for the shift in its plans and whether it was a firm decision. Commissioner Tuma did not discuss AFCL’s Motion, however, and the relief that AFCL requests in response to the removal of the turbines. Further, this discussion occurred on the record, meaning that it cannot constitute a prohibited ex parte communication.

AFCL also objects that Commissioner Tuma drove the local roads in the community and suggests that he may have had prohibited ex parte communications in connection with these travels. This allegation is framed in speculative terms and AFCL did not point to any specific communication Commissioner Tuma might have had. There is no ethical rule prohibiting a commissioner from visiting a community in which an energy generation project will be built. Commissioner Tuma avers that he did not speak to people in the community about the case or gather information from stakeholders. There is no basis to find that he engaged in prohibited ex parte communications while visiting the local community.

Commissioner Tuma also disclosed he had a short conversation with Commissioner Mathiason of Freeborn County, in which the two discussed Xcel’s decision to remove the turbines and their shared concern about the development, and generally the role of local governments and transportation issues in the Commission’s permitting process. This also was not a prohibited ex parte communication.

⁹⁹ Tr. at 9.

¹⁰⁰ Public Comment – Letter from London and Oakland Townships (July 16, 2020) (eDocket No. 20207-164993-01) (emphasis added).

It is important to note that *ex parte* communications are defined by the Commission's rules and are prohibited only in certain circumstances.¹⁰¹ A prohibited *ex parte* communication occurs between a commissioner and a party or participant.¹⁰² Both "party" and "participant" are defined terms. A party is "person by or against whom a proceeding before the commission is commenced or a person permitted to intervene in a proceeding before the commission. A party includes a petitioner, complainant, intervenor, applicant, and respondent, and their attorneys, agents, or representatives."¹⁰³ A participant is "a person who files comments or appears in a proceeding, other than public hearings held in contested cases and other commission proceedings conducted to receive general public comments, to present views without becoming a party."¹⁰⁴ Commissioner Mathiason was neither a party, nor a participant, in the Freeborn Wind matter.

The types of proceedings in which an *ex parte* communication is barred are also defined. Prohibited communications relate to material issues in a contested case proceeding, a rulemaking, or a disputed formal petition.¹⁰⁵ There is no contested case in this docket and the matter is also not a rulemaking. It also is not a disputed formal petition under the Commission's rules as that term is defined in Minn. R. 7845.7200, subp 2. Under that rule, a "disputed formal petition" includes a formal petition: (1) filed with the commission; (2) for which a hearing is not automatically required; (3) for which the commission has received a written statement disputing the action or relief sought in the petition; and (4) *on which the commission has ordered comments, written responses to comments, oral argument, negotiations, settlement conferences, a formal hearing, or other procedures it considers necessary or helpful to enable it to decide the petition.*¹⁰⁶ The Commission had not ordered any further filings of proceedings on AFCL's Motion at the time of Commissioner Tuma's discussion with Commissioner Mathiason, and still has not done so.

Finally, AFCL argues that Commissioner Tuma engaged in actions that adversely impacted the confidence of the public in the Commission's integrity, blatantly disregarded the Commission's principle of broad public participation in matters before it, and that his actions gave rise to an appearance of impropriety. There is no basis upon which to conclude that this is true. Commissioner Tuma engaged in discussions with Xcel regarding its decision about the turbines, and he noted concerns about the completion of the project and the impact on local governments. Commissioner Tuma indicated that he considered proposing his decision option to create an opportunity to gather further information, particularly through opening a comment period. Commissioner Tuma did not formally offer his decision option and the Commission did not vote or take any other action related to the issues raised.

¹⁰¹ Minn. R. 7845.7100.

¹⁰² Minn. R. 7845.7200, subp. 1.

¹⁰³ Minn. R. 7845.7000, subp. 8.

¹⁰⁴ *Id.*, subp. 7.

¹⁰⁵ Minn. R. 7845.7200, subp. 1.

¹⁰⁶ *Id.*, subp. 2 (emphasis added).

There is no support for AFCL's allegations against Commissioner Tuma. As to Commissioner Tuma, the Complaint should be dismissed without further action.

V. Sanctions Against Complainant

Under Minn. Stat. § 216A.037, subd. 4(i), the Administrative Law Judge may recommend a sanction against a complainant if the judge finds that the complainant's allegations were interposed for any improper purpose, including to harass, or to cause unnecessary delay or a needless increase in the costs of a proceeding. Given that the Administrative Law Judge has determined that AFCL's allegations have no legal or factual basis, the Administrative Law Judge has considered whether to recommend the imposition of sanctions upon AFCL. The Administrative Law Judge has considered that complaints of ethical violations against members of the Commission are fairly rare and that public policy favors transparency and accountability for those appointed to positions involving high-level decision-making. The Administrative Law Judge does not recommend sanctions be levied against AFCL, but cautions that the filing of a similar complaint, if determined to be without a sufficient basis, could engender a different result.

VI. Conclusion

AFCL may have substantive or procedural objections to actions taken by the Commission, and as it has demonstrated in this docket already, AFCL may pursue relief on appeal. Having found no basis to believe that Chair Sieben and Commissioner Tuma violated the Commission's ethics rules, however, the Administrative Law Judge recommends that the Complaint be dismissed without further action or the imposition of sanctions on any person or entity.

J. P. D.

September 11, 2020

See Attached Service List

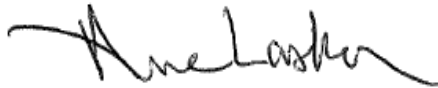
**Re: *In the Matter of the Complaint of the Association of Freeborn County
Landowners***
OAH 71-2500-37018
MPUC IP-6946/WS-17-410

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **INVESTIGATIVE REPORT PURSUANT TO MINN. STAT. § 216A.037** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7881, Anne.Laska@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



ANNE LASKA
Legal Assistant

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 Complaint of the Association of Freeborn County Landowners	OAH Docket No.: 71-2500-37018 MPUC IP-6946/WS-17-4108
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Anne Laska certifies that on September 11, 2020, she served the true and correct **INVESTIGATIVE REPORT PURSUANT TO MINN. STAT. § 216A.037** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

First Name	Last Name	Email	Company Name	Delivery Method
Lisa	Agrimonti	lagrimonti@fredlaw.com	Fredrikson & Byron, P.A.	Electronic Service
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	Electronic Service
Richard	Davis	Richard.Davis@state.mn.us	Department of Commerce	Electronic Service
Bret	Eknes	bret.eknes@state.mn.us	Public Utilities Commission	Electronic Service
David	Harbert	dharbert@kaaltv.com	KAAL-TV	Electronic Service
Michael	Kaluzniak	mike.kaluzniak@state.mn.us	Public Utilities Commission	Electronic Service
Dan	Litchfield	DLitchfield@invenergyllc.com	Invenergy LLC	Electronic Service
Carol A.	Overland	overland@legalectric.org	Legaelectric - Overland Law Office	Electronic Service
Jessica	Palmer Denig	jessica.palmer-Denig@state.mn.us	Office of Administrative Hearings	Electronic Service
Richard	Savelkoul	rsavelkoul@martinsquires.com	Martin & Squires, P.A.	Electronic Service
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	Electronic Service
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Electronic Service
Katie	Sieben	katie.sieben@state.mn.us	Public Utilities Commission	Electronic Service
John	Tuma	john.tuma@state.mn.us	Public Utilities Commission	Electronic Service