

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CIVIL DIVISION

Association of Freeborn County Landowners,
Plaintiff,

ORDER

vs.

Court File No. 62-CV-20-3674

Minnesota Public Utilities Commission,
Defendant.

THE ABOVE-TITLED MATTER was heard on September 2, 2020 on Defendant and Intervenor's motion to dismiss Plaintiff's claims pursuant to Minn. R. Civ. P. 12.02(a) and Minn. R. Civ. P. 12.02(e), as well as Plaintiff's motion for a temporary injunction. Plaintiff was represented by Carol Overland, *Esq.* and Dorene Hansen, *Esq.*, Defendant was represented by Jeffrey Boman, *Esq.*, Intervenor-Defendants Buffalo Ridge Wind, LLC and Three Waters Wind Farms, LLC were represented by Andrew Davis, *Esq.*, and Intervenor-Defendant Northern States Power Company and Plum Creek Wind Farm, LLC were represented by Lisa Agrimoni. This hearing was conducted remotely via Zoom technology, due to the ongoing COVID-19 pandemic.

Based upon all the files and proceedings herein, the Court makes the following:

ORDER

1. Defendant and Defendant-Intervenor's motions to dismiss are GRANTED.
2. This matter is hereby dismissed with prejudice.
3. An attached memorandum is incorporated by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 25, 2020

BY THE COURT:

The Honorable Sara Grewing
Judge of District Court

MEMORANDUM

FACTS

Plaintiff commenced this case against the Defendant on June 11, 2020 by serving copies of its Summons and Complaint on Defendant. In its Complaint, Plaintiff has requested declaratory and equitable relief pursuant to the Minnesota Environmental Rights Act (“MERA”), with specific reference to Minn. Stat. § 116B.10. In particular, Plaintiff has asked the Court to find that Defendant has failed to comply with Minn. Stat. § 216F.05 and the Minnesota Environmental Policy Act (“MEPA”) by neglecting to promulgate rules for the siting and environmental review of Large Wind Energy Conservation Projects. Relatedly, Plaintiff is seeking an order directing Defendant to “promulgate rules for wind siting and environmental review[,] and a remand for additional proceedings as required by law and [Defendant’s] rules.

Further, Plaintiff has requested a temporary injunction halting the construction of four wind energy projects in Minnesota: the Freeborn Wind Project, the Plum Creek Wind Project, the Buffalo Ridge Wind Project, and the Three Waters Wind Project. Plaintiff’s reason for its proposed temporary injunction is that these four projects “were identified in a review of noise studies as projects with potential to violate Minnesota’s existing noise standard.” Index 1.

In response to Plaintiff’s Complaint, Defendant filed a notice of its motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted on June 26, 2020. Also in response to Plaintiff’s Complaint, Norther States Power Company, Plum Creek Wind Farm, LLC, Buffalo Ridge Wind, LLC and Three Waters Wind Farms, LLC petitioned the Court to intervene as defendants in this action pursuant to Minn. R. Civ. P. 24.01, Minn. R. Civ. P. 24.02, and Minn. Stat. § 116B.10, subd. 4. These petitions were unopposed by the parties, and each was granted by the Court. After Defendant-Intervenors were allowed to

participate in the proceedings, all filed motions to dismiss on substantially the same basis as Defendant's original motion.

On July 8, Plaintiff gave notice of its motion for a temporary injunction to halt the ongoing permitting and construction of the four wind projects noted above during the pendency of this case. Finally, on July 15, 2020, the Court issued an Order staying all scheduling conferences and discovery, pending its ruling on Defendant and Defendant-Intervenors' motions to dismiss.

LEGAL ANALYSIS

I. Standard of Review

Defendant and Defendant-Intervenors have motioned for dismissal of Plaintiff's claims for lack of subject matter jurisdiction, pursuant to Minn. R. Civ. P. 12.02(a) and failure to state a claim upon which relief can be granted, pursuant to Minn. R. Civ. P. 12.02(e). "On motions to dismiss for failure to state a claim on which relief can be granted, courts consider only those facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in favor of the non-moving party." *In re Individual 35W Bridge Litigation*, 806 N.W.2d 820, 826-27 (Minn. 2011). However, in considering the facts alleged in a complaint, the district court may "consider...the documents referred to in the complaint" in addition to the complaint itself. *Hamann v. Park Nicollet Clinic*, 792 N.W.2d 468, 469 (Minn. App. 2010). A motion to dismiss should be granted if "...it appears to a certainty that no facts, which could be introduced consistent with the pleading[s], exist which would support granting the relief demanded." *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019).

II. The Court Lacks Subject Matter Jurisdiction over this Case

Defendant and Defendant-Intervenors (hereinafter "Defendant")¹ argue that the Court lacks subject matter jurisdiction to hear Plaintiff's claims, because the doctrine of collateral

¹ As previously mentioned, Defendant and Defendant-Intervenors' arguments for the dismissal of Plaintiff's claims are substantially similar. Therefore, the Court will refer to Defendant's arguments for ease of reference, unless

estoppel applies. Defendant argues that this is so because the issues laid out in Plaintiff's Complaint were previously litigated before Defendant in its quasi-judicial capacity in MPUC Docket IP-6946/WS-17-410 ("the Freeborn Docket") regarding Freeborn Wind Energy LLC's application for a wind site permit. In that proceeding, an Administrative Law Judge ("ALJ") ruled in favor of issuing a permit on December 19, 2018. Furthermore, Defendant notes that while Plaintiff appealed several the ALJ's decisions in the Freeborn Docket (dated May 10, 2019 and March 31, 2020, which are now pending before the Minnesota Court of Appeals), Plaintiff did not appeal the ALJ's December 19, 2018 order.²

In further detail, Defendant argues that Plaintiff's claims regarding its alleged failure to conduct environmental review of the Freeborn Wind Project, its alleged failure to develop rules for siting and environmental review of such projects, and its alleged exclusion of the public from participating in administrative proceedings were *all* previously raised and adjudicated in the Freeborn Docket. Moreover, Defendant argues that these issues were necessary to its adjudication of the Freeborn Docket, and that because it is the exclusive permitting authority for large wind energy systems in Minnesota, Plaintiff's claims were properly before it as a matter of procedure.

In response, Plaintiff asserts that its Complaint "is not about the individual permitting decisions or actions of [Defendant]," but rather seeks to address "systemic flaws" in Defendant's method of siting wind projects. Index 42. Similarly, Plaintiff argues that MERA provides the Court with jurisdiction over this case, because its Complaint is rooted in the statute's provision for civil actions against the state when existing environmental protections have proved to be inadequate "to protect the air, water, land or other natural resources." *Id.* In addition, Plaintiff has objected to Defendant's references to documents outside of the Complaint in its arguments for

otherwise noted.

² Defendant has also noted that the Plum Creek Wind Project, the Buffalo Ridge Wind Project, and the Three Waters Wind Project, all of which Plaintiff is seeking to enjoin in this case, are currently pending administrative adjudication.

dismissal, claiming that the Court may review “only the Complaint and statements made in the Complaint.” Index 42, quoting *Northern States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004). However, Plaintiff does admit that its claims have been raised before Defendant in the past in administrative proceedings.

The doctrine of collateral estoppel “precludes parties to an action from relitigating in subsequent actions issues that were determined in the prior action.” *In re Village of Byron*, 255 N.W.2d 226, 228 (Minn. 1977). In *State ex rel. Friends of Riverfront v. City of Minneapolis*, the Minnesota Court of Appeals held that administrative proceedings with “adequate procedural safeguards” can usher in collateral estoppel in the same manner that . 751 N.W.2d 586, 589 (Minn. App. 2008). In determining whether the proceeding in that case carried such safeguards, the *Riverfront* Court referred to the five-part test discussed in *Graham v. Special Sch. Dist. No. 1*: “[whether] (1) the issues are identical, (2) the issue was necessary to the administrative agency’s decision, (3) the decision was a final determination subject to judicial review, (4) the estopped party was a party or in privity with a party to the prior determination, and (5) the estopped party was given “a full and fair opportunity to be heard on the adjudicated issue.” 472 N.W.2d 114, 116 (Minn. 1991).

As a threshold matter, the Court recognizes that Defendant’s reference to documents cited in Plaintiff’s Complaint, including and especially those contained in the Freeborn Docket (IP6946/WS-17-410) is appropriate here, because the Freeborn Docket and other administrative dockets are listed by name and number in Plaintiff’s Complaint. In addition, while Plaintiff has cited to *Northern States Power Co.* in support of its argument for such documents to be excluded from consideration, the Court in that case expressly held that “a court may consider documents referenced in a complaint without converting the motion to dismiss to one for summary judgment.” 684 N.W.2d 845, 490 (Minn. 2004).

In this case, it has been established that Plaintiff was a party to the Freeborn Docket proceedings, that Plaintiff was afforded an opportunity to be heard on the issues raised therein, and that that action resulted in a final permitting determination that was subject to judicial review. Defendant has also represented that the issues that Plaintiff raised in the Freeborn Docket were necessary to its ruling in the matter. Therefore, the Court's main inquiry is whether the issues that Plaintiff raised in the Freeborn Docket are the same as those in its Complaint. In comparing these records, the Court finds that the issues are the same, because Plaintiff previously challenged the Freeborn Wind Project on the basis that Defendant failed to conduct environmental review, that Defendant failed to promulgate rules for the siting and environmental review of large wind projects, and Defendant excluded members of the public from participating in administrative proceedings that dealt with the Freeborn Wind Project. These issues are mirrored by Counts 1-3 of Plaintiff's Complaint. Therefore, collateral estoppel applies.

While Plaintiff has asserted that its Complaint is meant to address systemic flaws in Defendant's siting process, rather than "individual permitting decisions," the Court finds this argument troublesome, because Plaintiff's Complaint also specifically requests that construction be halted on the four wind projects, including the Freeborn Wind Project, while the projects are remanded "for rulemaking and additional proceedings." Index 1. Further, notwithstanding the fact that Plaintiff has brought the current action under MERA, nothing in MERA's statutory framework confers jurisdiction where it is otherwise lacking; because Plaintiff is requesting the same relief on the same basis as it did in the Freeborn Docket, collateral estoppel bars the Court from hearing this case.

For all of the reasons discussed here, Defendant's motion to dismiss is granted. Plaintiff's Complaint is hereby dismissed for lack of subject matter jurisdiction.³

³ Because the Court finds that it lacks subject matter jurisdiction to hear this case, it does not reach Defendant's arguments with regard to Minn. R. Civ. P. 12.02(e) or Plaintiff's arguments for a temporary injunction.