

**STATE OF MINNESOTA
IN COURT OF APPEALS**

No. A19-1195, A20-0947

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

**RELATOR
ASSOCIATION OF FREEBORN
COUNTY LANDOWNERS'
OBJECTION TO FREEBORN WIND
ENERGY'S REQUEST FOR
TAXATION OF COSTS**

Association of Freeborn County Landowners (hereinafter "AFCL") hereby objects to the request of Northern States Power d/b/a Xcel Energy, as owner of Freeborn Wind LLC (hereinafter "Freeborn Wind") in its "Notice, Statement and Claim of Costs and Disbursements Incurred by Prevailing Party, served on April 26, 2021. Objections are due seven (7) days after service. AFCL objects because Freeborn Wind's request is beyond the scope of allowable costs by including the transcript of the September 20, 2018 meeting, and Freeborn's request is inequitable considering the relative resources of the parties.

**I. FREEBORN WIND CLAIMS COSTS OF TRANSCRIPT FOR
SEPTEMBER 20, 2019 MEETING NOT SUBJECT OF APPEAL**

Freeborn Wind has claimed and attempts to charge for a transcript of the September 20, 2018 meeting of the Public Utilities Commission. This September 20, 2018 meeting and this meeting's decision was not part of the appeal in either of the

above-captioned dockets. This was made clear in the initial filings and subsequent pleadings. See both of AFCL's Statement of Case, para. 2b (A19-1195 appeal of Order 5/10/2019); (A20-0947 appeal of Order 3/31/2020). The exclusion of the Commission's "decision #1" resulting from the September 20, 2018 meeting was also inexplicably raised in questions during oral arguments, odd because of the specific appeal of only Commission "decision #2," the February 15, 2019 meeting resulting in the May 10, 2019 Order appealed, and "decision #3," the April 1, 2019 meeting resulting in the March 31, 2020 Order.

The prevailing party will not be allowed to tax as a disbursement the cost of reproducing parts of the record which are not relevant to the issues on appeal.

Minn. Rules of Civil Appellate Procedure, Rule 129.04.

Taxation of costs for the September 20, 2018 Public Utilities Commission is not allowed. The invoice for transcripts is not itemized, and it is not clear what portion of the transcript cost is attributable to this September 20, 2018 transcript.

Freeborn Wind/Xcel Energy/Northern States Power has no basis for claiming the cost of this transcript as eligible for recovery under Rule 139.

II. EQUITY REQUIRES THIS REQUEST FOR COSTS BE DISALLOWED

The Freeborn Wind Commission docket was the first contested case for a wind siting permit, commencing over 20 years and 2,500 megawatts of siting by the Commission, and in this first contested-case, the Administrative Law Judge recommended denial of the permit, and alternately, that the Commission could allow the applicant to demonstrate it could comply with state noise standards. After this first ever

contested case with the first ever ALJ recommendation of denial, Association of Freeborn Landowners had a reasonable basis for a challenge to the Commission's subsequent decision contrary to the ALJ's recommendation. This was not a frivolous appeal.

The Public Utilities Commission has a legislative mandate to encourage public participation:

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

Minn. Stat. §216E.08, Subd. 2. However, it is very difficult for the public to participate.

AFCL has studiously worked within the administrative and legal system to address the issues presented when a wind project such as Freeborn moves into an existing community. AFCL has done so for four years, four years of constant, creative, and labor-intensive work. The administrative and legal systems are not easily navigated, and unlike other states, Minnesota does not offer intervenor compensation to assist communities before the Public Utilities Commission. AFCL has retained counsel; has attended and participated in every hearing and meeting; and filed reams of individual and group comments filings with the Commission and the Court; held bake sales, silent auctions, dedicated grain donations, and hosted benefits at the local bar. AFCL has persisted through the many administrative and legal hoops for four years.

Freeborn Wind/Xcel Energy has unlimited funds available through expenses incorporated into the rates. Freeborn's administrative and legal expenses are paid by

ratepayers, even including ratepayers participating in Commission siting dockets! To characterize this set up as “unfair” or “inequitable” is a gross understatement. The administrative and legal system are heavily skewed to limit the ability of the public to participate, and is overtly designed to allow all the resources a utility desires to resist public challenges to be assessed to ratepayers. Freeborn’s attempt to extract costs from AFCL is an affront to the notion of public participation.

The \$3,312.75 is spare change to Xcel Energy, and is \$3,312.75 more than AFCL has. Citizens’ groups have no access to Intervenor Compensation. Citizens’ groups are not afforded the option of filing for “In Forma Pauperis” before the Court of Appeals. Minnesota Statutes § 563.01; Minn. R. Civ. App. P. 109.

Association of Freeborn Landowners asks the court to deny, in toto, Freeborn Wind a/k/a Xcel Energy a/k/a Northern States Power’s claim for Taxation of Costs and Disbursements.

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