

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Dan Lipschultz
Matthew Schuerger
Katie J. Sieben
John A. Tuma

Commissioner
Commissioner
Commissioner
Commissioner

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

DOCKET NO. IP-6946/TL-17-322

**ASSOCIATION OF FREEBORN COUNTY LANDOWNERS
RESPONSE TO APPLICANT’S MOTION TO STRIKE**

Association of Freeborn County Landowners (AFCL), participant in the above-captioned docket and intervenor in the related and concurrent wind siting docket (IP6946/WS-17-410), brings this Response to Applicant’s “Motion to Strike Untimely Association of Freeborn County Landowners Petition for Reconsideration and Non-Record Evidence.”

On January 18, 2019, Invenergy’s Freeborn Wind filed a “Motion to Strike Untimely AFCL Petition for Reconsideration and Non-Record Evidence,” in response to AFCL’s Petition for Reconsideration filed January 8, 2019. Applicant falsely claims that AFCL’s Petition for Reconsideration “is therefore deemed filed on January 9, 2019, and is untimely.” eDockets shows otherwise. AFCL should not have to expend time and resources responding to this petty Motion.

I. EXCLUSION OF A FILING IS PERMISSIVE, NOT MANDATORY.

Exclusion of a filing is permissive, and not mandatory. Applicant claims that “[t]he Commission does not have authority to waive the 20-day statutory deadline.” That statement is not correct in that it twists the rule and the Commission’s authority. The Commission does have authority to exclude untimely filings, but it is authority to exclude. The exclusion of a filing hinges

on two requirements, that a filing be untimely, and that a Commission determination be made:

Commission rules state:

Subpart 1. When filings may be excluded.

On its own motion or at the request of any party or participant, the commission **may** exclude a filing from the record:

A. when the filing was not made within a time period established by rule, notice, or commission order; and

B. upon a commission determination that the value of the document to the commission's deliberative process is **outweighed by prejudice to a party, participant, or the public interest caused by the untimeliness.**

Minn. R. 7829.0420 (emphasis added).

AFCL's filing in docket IP-6946/TL-17-322 was not untimely – we need not go further.

A. AFCL's FILING WAS NOT UNTIMELY, DEMONSTRATED BY COMMERCE CONFIRMATION OF 4:30 p.m. FILING

Freeborn Wind disingenuously claims AFCL filing of Reconsideration in Freeborn Wind transmission docket was untimely. It was not untimely. Upon filing, confirmation was received:

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

Subject:Confirmation of Completed Official Document Service

Date:Tue, 8 Jan 2019 16:30:56 -0600

From:eService.admin@state.mn.us

To:overland@legalectric.org

Based on your selection to use eFiling application to provide service to parties via email for those parties opting to accept electronic service, the application confirms it completed service on 01/08/2019 at 4:30 PM for submission # 20191-148989.

For questions contact eService.admin@state.mn.us

See Freeborn Wind Motion to Strike, "Declaration" of Lisa M. Agrimonti, Exhibit 2 (Docket IP-6946/TL-17-322). The confirmation states "the application confirms it completed service on 01/08/2019 at 4:30 PM" of AFCL's Petition for Reconsideration.

- "Confirmation of Completed Official Document Service" means exactly that, completion of service by Commerce.
- Commerce eDockets regarded the IP-6946/TL-17-322 filing as timely for that day, verified

by posting of that document as 1/8/2018. If it were late, it would have been posted as 1/9/2019.

Applicant claims “[t]he service was 56 seconds after the deadline and therefore did not qualify as service on January 8, 2019.” False. The document was received, “qualified,” by Commerce and served as filed that day, January 8, 2019, and shows in eDockets as 1/8/2019.

AFCL’s subsequent filing in IP-6946/WS-17-410, five minutes later, at 16:35:41, was undeniably “untimely,” and was filed by Commerce as received 1/9/2019. That is how the eDockets system works. If late, they are filed in eDockets on the following day.

Applicant received evidence that it was timely filed, provided by AFCL counsel on January 9, 2019, and included by Applicant as Exhibit B. Despite this document, Applicant makes claims that it was not timely. AFCL’s filing in IP-6946/TL-17-322 was not late. Applicant states “[n]or has AFCL sought permission for the late filing.” Of course not – the filing was not late – there’s no need to seek permission for late filing.

B. APPLICANT HAS NOT SHOWN, NOR EVEN CLAIMED, ANY PREJUDICE CAUSED BY UNTIMELINESS.

The rules state that the Commission “may” exclude a filing if two conditions are met. The first condition is that the filing be untimely, and, as above, the AFCL Petition for Reconsideration filing in IP-6946/TL-17-322 was not late. But for the record, let’s look at the other condition.

The second condition to be met is that a Commission determination be made “that the value of the document to the commission's deliberative process is outweighed by prejudice to a party, participant, or the public interest caused by the untimeliness.” In its filing, Applicant makes no claim of prejudice. Applicant complains “[t]he service was 56 seconds after the deadline...” 56 seconds? Applicant was served at 4:30 January 8, 2019 with the Petition for Reconsideration in Docket IP-6946/TL-17-322 at 16:30:56, as shown on the Commerce “Confirmation of Completed Official Document Service.” See Motion, p. 2; Agrimonti Declaration, Exhibit 2.

On the other hand, there would be extreme prejudice to Association of Freeborn County

Landowners if its timely Petition for Reconsideration were not accepted. Further, there would be prejudice to future intervenors if the Commission were to deem a timely filing untimely when Commerce's eDockets did timely receive and serve parties, and regarded it as timely. It would also prejudice AFCL and future intervenors and the public interest if filings such as this Motion to Strike were taken at all seriously by the Commission.

7829.0250 REPRESENTATIONS TO COMMISSION.

A person who signs a pleading, motion, or similar filing, or enters an appearance at a commission meeting, by doing so represents that the person is authorized to do so, has a good faith belief that statements of fact made are true and correct, and that legal assertions are warranted by existing law or by a nonfrivolous argument for the extension or reversal of existing law or the modification or establishment of rules.

The Applicant's Motion to Strike is abuse of process.

AFCL asks that Applicant's Motion to Strike be denied and that Applicant be appropriately sanctioned for filing this Motion to Strike.

II. DOCUMENTS ATTACHED TO PETITION FOR RECONSIDERATION ARE NEW – THEY ARE DOCUMENTATION AFCL HAD REQUESTED AND WAS WAITING FOR.

AFCL's Exhibits E, F, and G were filed with the timely Petition for Reconsideration. They were not, but should have been, considered by the Administrative Law Judge in the hearing, should have been included in the record, as requested. Data Practices Act requests were sent to first Freeborn County, upon learning that County staff may have been in communication with Larry Hartman, EERA-Commerce. See attached Exhibit A. As a result of that request Freeborn County produce information that county staff was indeed contacting and having discussions with Larry Hartman, EERA-Commerce. Data Practices Act requests were then sent to Commerce. See attached Exhibit B. Hartman is NOT assigned to this project, and Freeborn's document production demonstrated that they were relying on statements by Hartman in their position regarding use of County road easements by the Applicant. Exhibit E, AFCL Petition for Reconsideration.

Based on that Freeborn County production, a Data Practices Act Request was filed with Dept. of Commerce regarding contacts with Freeborn County. Commerce stated it could find no written communications or documents beyond what was attached to AFCL Petition for Consideration as Exhibit F.

Exhibit G is new information, the World Health Organization Report. Granted it is more relevant to the siting docket, IP6946/WS-17-410.

Is there justification for not including the documents? The date shows that inclusion would have been a logical impossibility, they were not available at the time. The documents do contain new information, showing the back and forth communications between Applicant and Freeborn County and Dept. of Commerce-EERA regarding lack of land rights for the transmission line, the recognition that lack of land rights was a problem for Freeborn Wind, and the extent to which Applicant, Freeborn County, and the Dept. of Commerce worked to find a way to put transmission over non-participant land. The documents do not, however, convey the full measure of communication regarding this acknowledged issue. Applicant in its Motion claims that “it is between Freeborn Wind and the local units of local government.” Applicant Motion to Strike, p. 3-4. Once again, in Applicant’s view, the non-participant landowners are left out entirely. That is a primary failing of the Commission’s Order, and of Applicant’s, the County’s, and Commerce-EERA’s dealings in this matter. That lack of involvement and consideration of non-participant landowners should, and must, be considered by the Commission. This coordination between Applicant, Freeborn County, and Commerce in promotion of the project is not unlike the coordination of the “agreement” between Applicant, Commerce, and MPCA, with no notice or involvement of parties. Coordination, against landowner and public interest, without notice to or participation of parties, is improper.

AFCL asks that Applicant’s Motion to Strike Exhibits E, F, and G be denied.

III. AFCL ASKS THAT APPLICANT’S MOTION TO STRIKE BE DENIED IN

ITS ENTIRETY.

Applicant is grasping at straws to keep Association of Freeborn County Landowners
Petition for Reconsideration from coming before the Commission. Applicant's Motion is an abuse
of process. Applicant's Motion to Strike should be denied in its entirety.

Respectfully submitted,

January 28, 2019



Carol A. Overland #254617
Attorney for AFCL
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Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Dan Lipschultz
Matt Schuerger
Katie Sieben
John A. Tuma

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

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

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

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

AFFIDAVIT OF CAROL A. OVERLAND

IN SUPPORT OF ASSOCIATION OF FREEBORN COUNTY LANDOWNERS'

RESPONSE TO FREEBORN WIND'S MOTION TO STRIKE

STATE OF MINNESOTA)
) ss.
COUNTY OF GOODHUE)

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

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

2. I am representing the Association of Freeborn County Landowners in the above-captioned proceedings.
3. Attached as Exhibit A are true and correct copies of Data Practices Act Requests filed with Freeborn County. Selected items from the response to the final of these requests were attached to AFCL's Petition for Reconsideration, in both above-captioned dockets, as Exhibit E.
4. Attached as Exhibit B are true and correct copies of a Data Practices Act Request filed with the Department of Commerce. Selected items from the response were attached to AFCL's Petition for Reconsideration, in both above-captioned dockets, as Exhibit F.

Further your affiant sayeth naught.

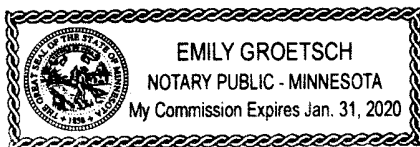
Dated: January 28th, 2019

Carol A. Overland

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

Signed and sworn to before me this
28th day of January, 2019

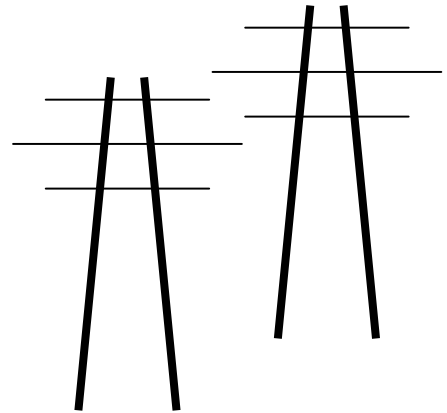
Emily Groetsch
Notary Public



Legalelectric, Inc.

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

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September 21, 2018

David J. Walker
County Attorney
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P.O. Box 1147
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Tom Jensen
County Administrator
Freeborn County
P.O. Box 1147
Albert Lea, MN 56007

Sue Miller
Public Works Director
Freeborn County
P.O. Box 1147
Albert Lea, MN 56007

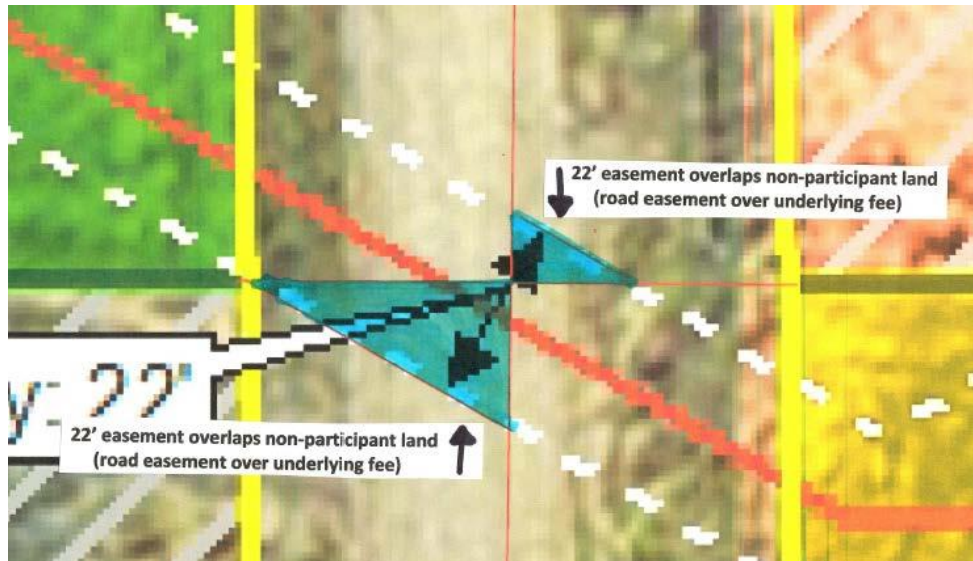
RE: Freeborn Wind – Lack of Land Rights to Build Transmission

Dear Mr. Walker, Mr. Jensen, and Ms. Miller:

I am writing on behalf of Association of Freeborn County Landowners, via email, regarding land rights held by Freeborn Wind, and more importantly, land rights NOT held by Freeborn Wind.

At yesterday’s Public Utilities Commission meeting, I raised the fact that Freeborn Wind does not have sufficient land rights to build its collector system and transmission line. At that time, Commissioner Tuma noted, “If you don’t have the land, you can’t build it,” to which the other Commissioners and Freeborn Wind agreed.

Association of Freeborn County Landowners is particularly concerned about the road crossing at County Road 108 and 830th Avenue, repeatedly mentioned in the transmission docket:



Please note the blue triangles. This is a representation of the land within the proposed easement for which Freeborn Wind does not have land rights. Linda Lorenzen, one of the affected landowners who has not agreed to use of her land, was at the PUC meeting and made her presence and objections known.

At the hearing, in pre-filed direct and oral testimony, and in briefing, Freeborn asserted that it had all land rights necessary, which it does not, and claimed that it was working with the county to secure land rights at this crossing and for the underground collector system. If there are such negotiations ongoing, to my knowledge landowners have not been present nor have they been given notice or invited.

The county has an easement for this road, but it is my understanding that it is a road easement, and not a fee interest. It is well-settled in Minnesota that the fee owners have an underlying interest, as above, represented by those blue triangles. On what authority would the county negotiate with Freeborn without the fee owners' consent?

Freeborn Wind is organized as a Limited Liability Company. It is not a utility. When the project is transferred to Xcel Energy, the entity owning the project will remain "Freeborn Wind, LLC." That fact is in the application, testimony, and hearing record.

Yesterday's decision is not "final." The Public Utilities Commission will issue its Final Order sometime in the future, an estimated 4-6 weeks, based on past experience. The transmission and site permit orders may be issued at different times. The Commission's decision is not "final" until that Final Order is released, and I anticipate that the Order will be challenged, depending on how the Commission writes its way around the ALJ's Recommendation of denial of the permit.

As Commissioner Tuma noted, "If you don't have the land, you can't build it." Freeborn Wind does not have the land.

Please let me know if you have any questions.

Very truly yours,



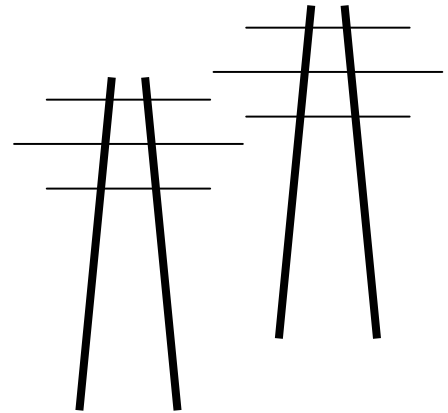
Carol A. Overland
Attorney at Law

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CORRECTION!



September 21, 2018

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Albert Lea, MN 56007

Tom Jensen
County Administrator
Freeborn County
P.O. Box 1147
Albert Lea, MN 56007

Sue Miller
Public Works Director
Freeborn County
P.O. Box 1147
Albert Lea, MN 56007

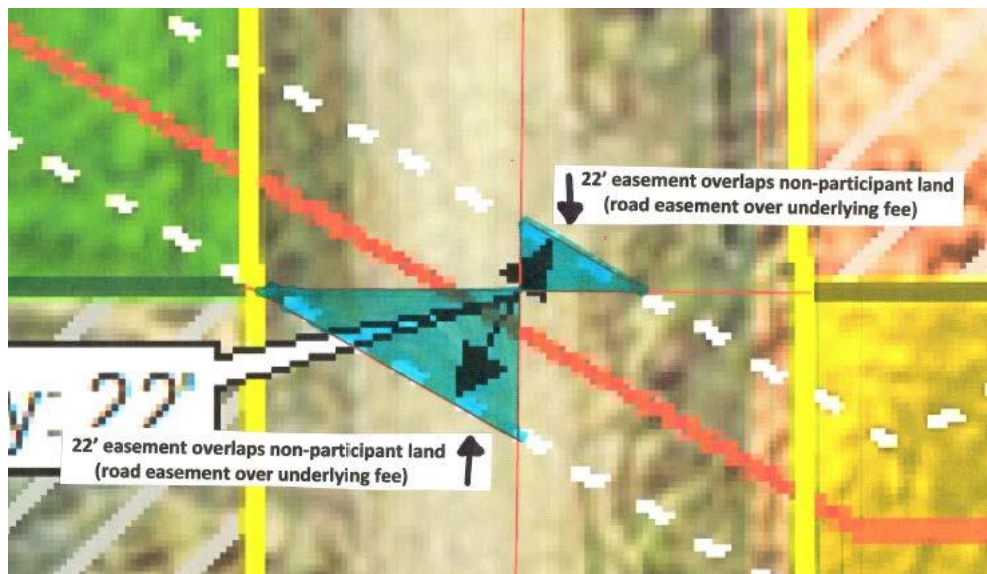
RE: Freeborn Wind – Lack of Land Rights to Build Transmission - 120th St & 830th Ave

Dear Mr. Walker, Mr. Jensen, and Ms. Miller:

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At the hearing, in pre-filed direct and oral testimony, and in briefing, Freeborn asserted that it had all land rights necessary, which it does not, and claimed that it was working with the county to secure land rights at this crossing and for the underground collector system. If there are such negotiations ongoing, to my knowledge landowners have not been present nor have they been given notice or invited.

The county has an easement for this road, but it is my understanding that it is a road easement, and not a fee interest. It is well-settled in Minnesota that the fee owners have an underlying interest, as above, represented by those blue triangles. On what authority would the county negotiate with Freeborn without the fee owners' consent?

Freeborn Wind is organized as a Limited Liability Company. It is not a utility. When the project is transferred to Xcel Energy, the entity owning the project will remain "Freeborn Wind, LLC." That fact is in the application, testimony, and hearing record.

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As Commissioner Tuma noted, "If you don't have the land, you can't build it." Freeborn Wind does not have the land.

Please let me know if you have any questions.

Very truly yours,

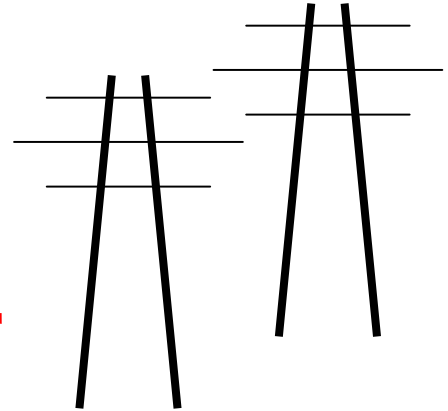


Carol A. Overland
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DATA PRACTICES ACT REQUEST

October 8, 2018

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Tom Jensen
County Administrator
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Albert Lea, MN 56007

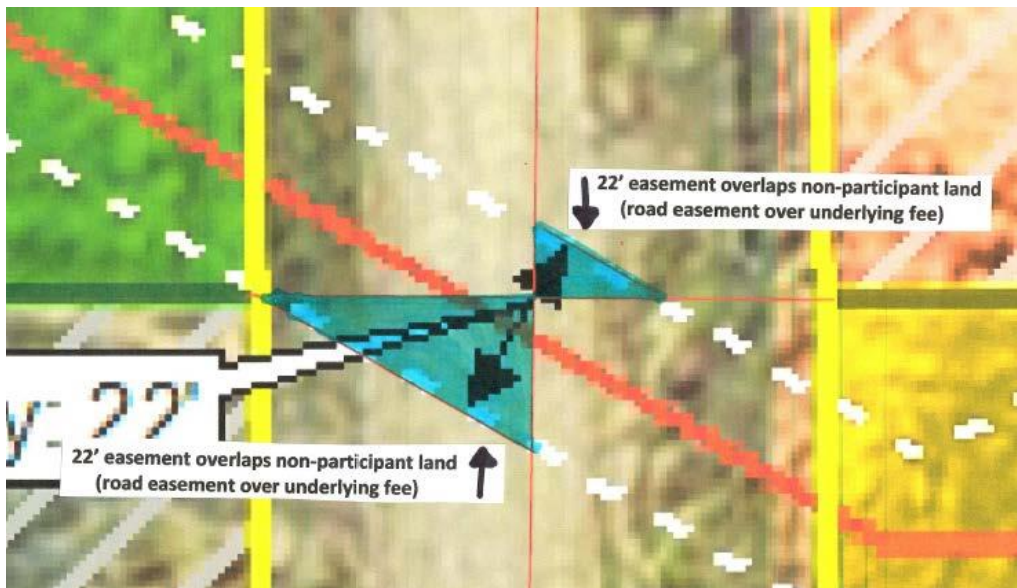
Sue Miller
Public Works Director
Freeborn County
P.O. Box 1147
Albert Lea, MN 56007

RE: Freeborn Wind – Lack of Land Rights to Build Transmission - 120th St & 830th Ave

Dear Mr. Walker, Mr. Jensen, and Ms. Miller:

I am writing on behalf of Association of Freeborn County Landowners, via email, regarding land land rights NOT held by Freeborn Wind. It’s my understanding that the County is working on a three party agreement regarding land rights for Freeborn Wind’s transmission line and also areas for the underground collector system. The proposed agreement was not linked to the agenda when I last checked, and is not available for review.

Association of Freeborn County Landowners is particularly concerned about the road crossing at 120th Street and 830th Avenue, repeatedly mentioned in the transmission docket:



At this time, Association of Freeborn County Landowners requests the following documents:

- Copies of existing county easements for all land subject to the proposed agreement under discussion for Freeborn Wind transmission and/or collector system.
- Names and addresses of all fee owners of land subject to easements and/or easement negotiation.
- Copies of all notices to fee owners of land underlying easements that are the subject of negotiations and meetings regarding the proposed agreement under discussion for Freeborn Wind transmission and/or collector system.
- Copies of any other documentation conveying authority or used by county to claim authority to make such agreement regarding Freeborn Wind transmission and/or collector system.
- Copies of any and all emails and correspondence between county and any other party regarding easements and/or agreements for Freeborn Wind transmission and/or collector system.
- Meeting and phone notes from and between inter-county, county and/or townships and/or Freeborn Wind regarding easements and/or agreements for Freeborn Wind transmission and/or collector system.
- Documentation of payments, discussions, agreements, and negotiations regarding payment, taxes, fees payable, or other consideration from Freeborn Wind to county and townships related to execution of these agreements and/or use of easements by Freeborn Wind.

As Public Utilities Commission's Commissioner Tuma noted, "If you don't have the land, you can't build it." Freeborn Wind does not have the land, as the County is aware, based on the first item on tomorrow's workshop agenda .

Please let me know if you have any questions.

Very truly yours,

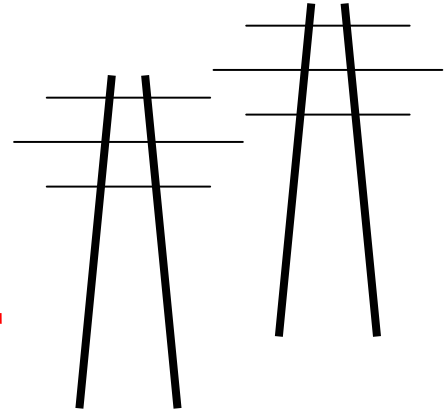


Carol A. Overland
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DATA PRACTICES ACT REQUEST

November 1, 2018

David J. Walker
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P.O. Box 1147
Albert Lea, MN 56007

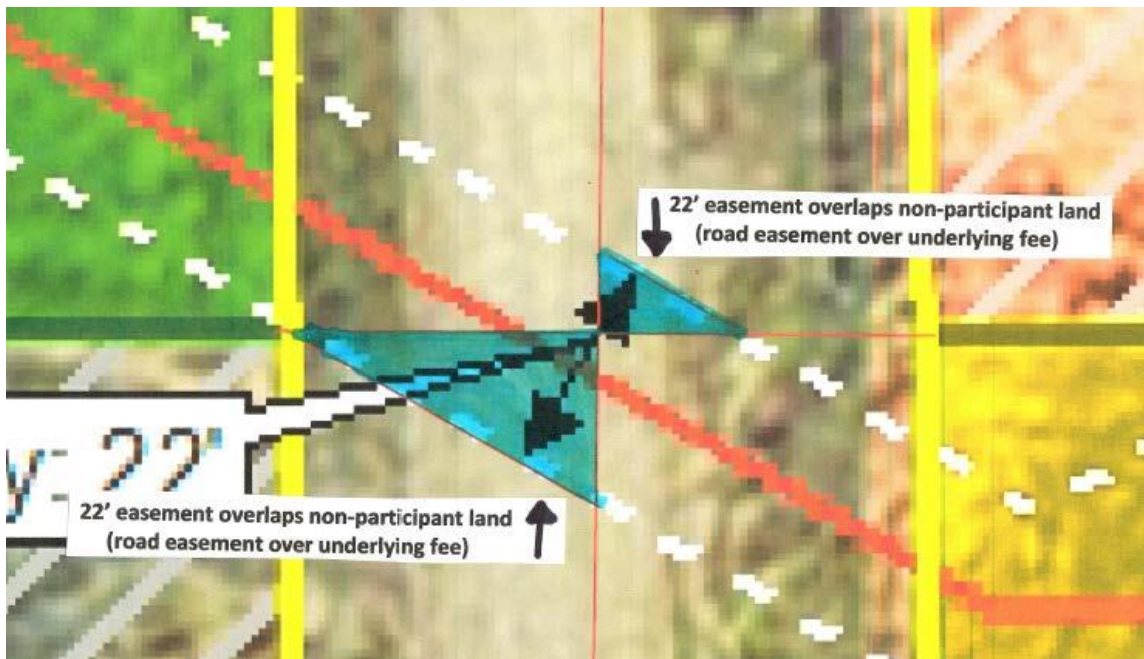
Tom Jensen
County Administrator
Freeborn County
P.O. Box 1147
Albert Lea, MN 56007

Sue Miller
Public Works Director
Freeborn County
P.O. Box 1147
Albert Lea, MN 56007

RE: Freeborn Wind – Lack of Land Rights to Build Transmission - 120th St & 830th Ave

Dear Mr. Walker, Mr. Jensen, and Ms. Miller:

I am writing again on behalf of Association of Freeborn County Landowners, via email. Below is our revised Data Practices Act Request, based on the County’s earlier excessive cost estimate. We are particularly seeking information regarding the County’s “three party agreement” regarding land rights for Freeborn Wind’s transmission line and also areas for the underground collector system where it is planned to encroach on non-participant’s land.



At the “workshop” I attended on October 9, it was stated that there was only one landowner affected, and that is false. Also, I want to let the county know, as I did at that workshop, that an affected party has the opportunity to request Reconsideration about specific issues, such as decommissioning, after the written order is posted. Minn. R. 7829.3000. It is my hope that the county will take a close look at the written order when issued, take note of its deficiencies, particularly in relation to the county ordinance. The Commission can, and should, take local ordinances into account in making its decision. See Minn. Stat. §216F.081.

At this time, Association of Freeborn County Landowners, via the Data Practices Act, requests the following documents:

- Copies of any and all county notices to fee owners of land underlying easements that are the subject of negotiations and meetings regarding the proposed agreement under discussion for Freeborn Wind transmission and/or collector system.
- Copies of any and all emails and correspondence, meeting and phone notes, between county staff and elected officials and any other party regarding easements and/or agreements for Freeborn Wind transmission and/or collector system.
- Copy of request for Opinion of Attorney General and Opinion regarding transmission and/or collector system easements and county road easements.

Please let me know if you have any questions regarding this revised, and more limited, Data Practices Act Request.

Very truly yours,



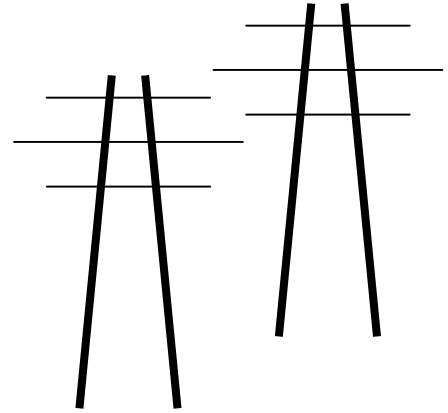
Carol A. Overland
Attorney at Law

cc: Dorenne Hansen, Association of Freeborn County Landowners

Legalelectric, Inc.

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DATA PRACTICES ACT REQUEST

November 30, 2018

Bill Grant bill.grant@state.mn.us
Deputy Commissioner
Department of Commerce
85 – 7th Place East, Suite 500
St. Paul, MN 55101

Heidi Retterath, heidi.retterath@state.mn.us
Data Practices
Department of Commerce
85 – 7th Place East, Suite 280
St. Paul, MN 55101

RE: Freeborn Wind – **DATA PRACTICES ACT REQUEST**
PUC Dockets 17-410 and 17-322
Use of County Easements for Freeborn Transmission and Collector System
“Utility” status of Freeborn Wind

Dear Mr. Grant and Ms. Retterath:

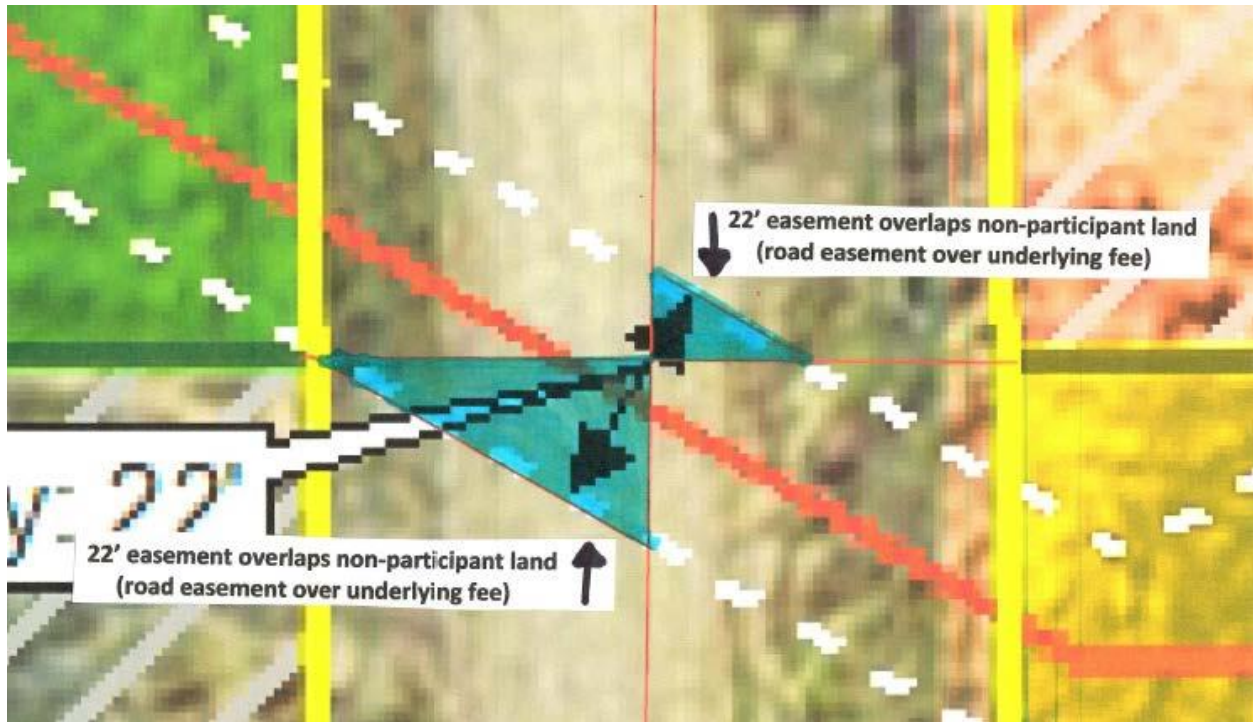
I am writing on behalf of Association of Freeborn County Landowners, in writing via email only regarding land land rights NOT held by Freeborn Wind, and regarding communications by Commerce staff regarding whether Freeborn Wind is a utility.

Association of Freeborn County Landowners requests that the information requested in the bullet points below be gathered and that we may schedule a time for a file review.

It’s my understanding that Freeborn County is working on a three party agreement regarding land rights for Freeborn Wind’s transmission line and also areas for the underground collector system. Freeborn County does not have fee interest land rights that would eliminate landowner interest beneath the County’s road or ditch easements. Based upon responses to a Data Practices Act Request to the County, it appears the County is basing its position on advice and/or statements from Commerce staff regarding the above two issues.

Association of Freeborn County Landowners is particularly concerned about Freeborn Wind’s

proposed transmission line crossing at 120th Street and 830th Avenue, which crosses over non-participant land – this was repeatedly mentioned in the Commission meeting in the transmission docket. This information and map were provided to the ALJ verbally, in writing, are part of the record, but it was not addressed by the ALJ in the Recommendation. This map's blue triangles represent the areas where Freeborn Wind plans to encroach on non-participant land:



At this time, Association of Freeborn County Landowners requests the following documents be prepared for a file review at Commerce:

- Copies of any and all documentation regarding discussions between Commerce staff and Freeborn County officials and/or staff regarding the Freeborn Wind transmission and/or collector system.
- Copies of any and all documentation regarding discussions between Commerce staff and Freeborn County officials and/or staff regarding easements and/or agreements for Freeborn Wind transmission and/or collector system.
- Copies of any and all documentation regarding discussions between Commerce staff and Freeborn County officials and/or staff regarding the Freeborn Wind would be/is regarded as a utility.
- Meeting, phone and/or other notes from and between Commerce staff and Freeborn County officials and/or staff; and/or township officials and/or staff; and/or Freeborn Wind/Invenergy regarding easements and/or agreements for Freeborn Wind transmission and/or collector system.

- Meeting, phone and/or other notes from and between Commerce staff and Freeborn County officials and/or staff; and/or township officials and/or staff; and/or Freeborn Wind/Invenergy regarding utility status of Freeborn Wind/Invenergy.
- All emails, notes, phone records, letters, and other documentation of discussions between Commerce staff, particularly Larry Hartman , and Freeborn County officials and staff, regarding easements and/or utility status.

As Public Utilities Commission's Commissioner Tuma noted, "If you don't have the land, you can't build it." Freeborn Wind does not have the land, as Commerce and the County are well aware.

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

Very truly yours,

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

Carol A. Overland
Attorney at Law

cc: Association of Freeborn County Landowners