

**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Dan Lipschultz
Matthew Schuerger
John Tuma
Katie Sieben

Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Freeborn Wind Energy LLC for a Route Permit for the Freeborn Wind Farm to Glenworth Substation 161 kV Transmission Line Project in Freeborn County

MPUC Docket No. IP-6946/TL-17-322;
OAH Docket No. 5-2500-35036

**MOTION TO STRIKE UNTIMELY
ASSOCIATION OF FREEBORN COUNTY
LANDOWNERS PETITION FOR
RECONSIDERATION AND NON-
RECORD EVIDENCE**

Freeborn Wind Energy LLC (“Freeborn Wind”) submits this Motion to Strike the Association of Freeborn County Landowners (“AFCL”) Petition for Reconsideration (“Petition”). Freeborn Wind respectfully requests that the Minnesota Public Utilities Commission (“Commission”): (1) strike AFCL’s Petition as untimely, or (2) alternatively, strike Section VII and Exhibits E-G of the Petition as outside the record.¹

I. DISCUSSION

1. AFCL’s Petition Is Untimely.

The Commission issued its Order Approving Route Permit (“Order”) on December 19, 2018.² The Executive Secretary served the Order that same day. By statute, a petition for reconsideration must be filed within 20 days of service of the Commission order.³ Commission

¹ Pursuant to Minn. R. 7829.0410, parties may file a response to this Motion within 14 days of its service.

² Order Approving Route Permit (eDocket No. 201812-148593-01) (hereinafter “Order”).

³ Minn. Stat. § 216B.27, subd. 1; Minn. R. 7829.3000, subp. 1 (incorporating statutory deadline into rule).

rules further require that filings be completed during “regular business hours.”⁴ Any document submitted after 4:30 is deemed filed on the following business day.⁵ Therefore, petitions for reconsideration of the Order were due by 4:30 p.m. on January 8, 2019.

AFCL did not file and serve its Petition by 4:30 p.m. on January 8, 2019.⁶ The “Confirmation of Completed Official Document Service” shows that service was completed at 16:30:56 on January 8, 2019.⁷ The service was 56 seconds after the deadline and therefore did not qualify as service on January 8, 2019. Under Commission Rules, AFCL’s Petition is therefore deemed filed on January 9, 2019 and is untimely. The Commission does not have authority to waive the 20-day statutory deadline.⁸ Nor has AFCL sought permission for the late filing.⁹ Accordingly, Freeborn Wind respectfully requests that the Commission strike the AFCL Petition as untimely.

2. Non-Record Materials Should Be Stricken.

Alternatively, Freeborn Wind respectfully requests the Commission strike the non-record materials submitted by AFCL.¹⁰ In its Section VII, and attached at Exhibits E, F, and G, AFCL

⁴ Minn. R. 7829.0400, subp. 5a.

⁵ “Documents received after 4:30 pm will be considered filed on the next business day. The agencies are not responsible for any document not received because of a failure in the user's computer system or delivery mechanisms.” See Minnesota Public Utilities Commission and Minnesota Department of Commerce, *eFiling Help*, available at <http://www.commerce.state.mn.us/eDocFile/eFilingHelp.html> (accessed Jan. 18, 2019).

⁶ See Declaration of Lisa M. Agrimonti (“Agrimonti Declaration”) and Exhibits 1 and 2, attached hereto.

⁷ Agrimonti Declaration, Ex. 2.

⁸ See *Matter of Northern States Power Co.*, 447 N.W.2d 614, 615 (Minn. App. 1989) (describing the 20-day deadline as jurisdictional).

⁹ Minn. R. 7829.0420, subs. 1-2. Allowing this late filing would also be a source of confusion in future proceedings and would require the Commission to ignore Minn. Stat. § 216B.27 and Minn. R. 7829.3000, at great prejudice to other parties.

¹⁰ See ACFL Petition for Reconsideration at Sect. VII and Exs. E-G (eDocket No. 20191-148989-01) (hereinafter “AFCL Petition”).

sought to introduce additional documents into the record.¹¹ AFCL’s Exhibits E, F, and G were not timely filed and their contents were not part of the record before the Commission issued its decision.¹² AFCL did not label the materials as “late filed” or provide any reason why they should not be excluded by the Commission.¹³

Furthermore, the documents do not provide value to the Commission’s deliberative process and their consideration would be prejudicial.¹⁴ Exhibits E and F consist of emails and documents that appear to have been obtained through Minnesota Government Data Practices Act (“MGDPA”) requests submitted to both Freeborn County and the Minnesota Department of Commerce. The MGDPA requests were not made until November 30, 2018, more than a month after the Commission hearing. The documents obtained, mostly emails from 2016 and 2017, involve various routine logistical discussions that occurred between individuals involved in this project.

AFCL provides no justification for its failure to obtain the documents in time for the contested case proceeding or its late submission of the documents.¹⁵ Exhibits E and F do not contain new information. Indeed, the Commission has already considered and rejected AFCL’s arguments regarding the sufficiency of Freeborn Wind’s land rights to construct the Project, concluding that “the extent of Freeborn Wind’s current or future property rights is beyond the scope of these proceedings,” and noting it is between Freeborn Wind and the local units of

¹¹ AFCL Petition at Sect. VII and Exs. E-G.

¹² Minn. R. 7829.0420, subps. 1-2.

¹³ *Id.* at subp. 2.

¹⁴ *Id.* at supb. 1(B).

¹⁵ Nor is a reasonable explanation possible. With the exception of one email from May 2018, the documents are all from January 2018 or before. *See* AFCL Petition at Exs. E, F.

government.¹⁶ Further, the record fully reflects Freeborn Wind’s coordination with state and local road jurisdictional authorities to obtain the necessary permits prior to construction for public road right-of-way use, including the County Road 108/830th Avenue crossing. The ALJ and the Commission considered the record evidence and properly concluded that AFCL’s assertions lacked merit.¹⁷ Nothing in AFCL’s Exhibits regarding local government coordination warrants reconsideration.

Exhibit G is a partial excerpt from an Environmental Noise Guidelines issued by the World Health Organization. In addition to being an incomplete document, the Noise Guidelines do not bear on the issues before the Commission in this *transmission line* proceeding.

II. CONCLUSION

Freeborn Wind respectfully requests that the Commission strike the AFCL Petition. Alternatively, Freeborn Wind respectfully requests the Commission Strike Exhibits E, F, and G, as well as Section VII of the Petition.

¹⁶ Order at 9-10.

¹⁷ See, e.g., Order at 9-10; ALJ Findings of Fact, Conclusions of Law and Recommendation at ¶¶ 73, 89, 152 (eDocket No. 20187-145230-01); Freeborn Wind Reply Comments at 8-9 (eDocket No. 20186-143962-01) (“Freeborn Wind has had multiple constructive discussions with Freeborn County staff and Shell Rock Township officials, and is confident a thorough Three Part Agreement will be reached that will address issues related to utility permits for use of public ROW, including the 108/830th Avenue crossing, as well as repair and maintenance of public road and drainage infrastructure.”); Freeborn Wind Farm to Glenworth Substation, Transmission Line Route Permit Application at 17 (eDocket No. 20179-135684-02).

Dated: January 18, 2019

Respectfully submitted,

/s/ Lisa M. Agrimonti

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