

**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

**FREEBORN WIND ENERGY LLC'S  
RESPONSE IN OPPOSITION TO  
ASSOCIATION OF FREEBORN COUNTY  
LANDOWNERS' MOTION TO STRIKE**

**I. INTRODUCTION**

Freeborn Wind Energy LLC (“Freeborn Wind”) submits this Response in Opposition to the Association of Freeborn County Landowners’ (“AFCL”) January 28, 2019 Motion to Strike the Letter from the Office of the Attorney General, dated July 25, 2018 (the “Letter”), included as Attachment A to Freeborn Wind’s Answer to Petitions for Reconsideration<sup>1</sup> (“Answer”) and the discussion thereof. Freeborn Wind respectfully requests that the Minnesota Public Utilities Commission (“Commission”) deny AFCL’s Motion in its entirety.

**II. DISCUSSION**

The Letter is not prejudicial to this proceeding, but rather provides persuasive legal authority for the Commission’s consideration. The Office of the Minnesota Attorney General is expressly required by Minnesota law to provide legal opinions to counties on questions of public

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<sup>1</sup> Freeborn Wind’s Answer to Petitions for Reconsideration and Attachment A were filed on January 18, 2019 (eDocket No. 20191-149385-02).

importance.<sup>2</sup> Further, it is a matter of longstanding principle that attorney general opinions are legal authority and, while not binding precedent, are afforded careful consideration and weight.<sup>3</sup> Accordingly, Freeborn Wind provided the authority for the Commission’s consideration.

Further, opinions of the Office of the Attorney General are publicly available from the Minnesota Attorney General’s Office and instructions for finding or requesting the opinions are posted on public websites.<sup>4</sup> AFCL’s limited inquiry was for an “opinion on a request *from Freeborn County*.”<sup>5</sup> That this inquiry failed to produce the Letter, which was made upon request from the *Dodge County* Attorney, is neither surprising nor a reasonable basis for AFCL’s assertions. While Freeborn Wind had no obligation to do so, Freeborn Wind included the Letter with its filing for the convenience and ease of review of the Commission, the parties, and the public.

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<sup>2</sup> See Minn. Stat. § 8.07 (“The attorney general on application shall give an opinion, in writing, to county, city, town, [...] on questions of public importance...”). The Attorney General has often provided these opinions in the same letter format as the Letter provided to Dodge County. See, e.g., State of Minnesota, Office of the Attorney General, *Annual Report Required by Minnesota Statute Section 8.08 and 8.15 Subdivision 4* (Fiscal Year 2014) at Appendix C-1, available at <https://www.leg.state.mn.us/docs/2014/mandated/140914.pdf>. See also Atty Gen. Op. 629-a (May 21, 1945) (county officials relying on attorney general advise are “acting in good faith and in line of duty.”).

<sup>3</sup> See *Agra Res. Coop v. Freeborn Cty. Bd. of Comm'rs*, 682 N.W.2d 681, 685 (Minn. App. 2004) (“While attorney general opinions interpreting the law are not binding precedent, they are helpful and entitled to careful consideration”); *Billigmeier v. Hennepin Cty.*, 428 N.W.2d 79, 81 (Minn. 1988) (noting that although opinions of the attorney general are not binding, the Minnesota Supreme Court has “traditionally afforded careful consideration and weight to such rulings”); *Vill. of Blaine v. Indep. Sch. Dist. No. 12, Anoka Cty.*, 138 N.W.2d 32, 39 (Minn. 1965) (“While the attorney general’s opinions are entitled to careful consideration at all times, they are not binding upon the courts”).

<sup>4</sup> See Minnesota Attorney General’s Office Website, *Attorney General Opinions*, <https://www.ag.state.mn.us/office/opinions/> (last visited 1/29/2019). Counsel for Freeborn Wind confirmed the availability of the July 25, 2018 Letter from the Attorney General’s Office Library, and was able to very quickly obtain it.

<sup>5</sup> See Affidavit of Carol Overland in Support of AFCL Motion to Strike at Exhibit A (January 28, 2019) (eDocket No. 20191-149671-01) (emphasis added).

The remainder of AFCL's allegations and assertions are wholly without merit. AFCL fails to provide a legitimate justification for excluding the Letter or discussion thereof in Freeborn Wind's Answer.

## **II. CONCLUSION**

For the reasons set forth above, Freeborn Wind respectfully requests that the Commission deny AFCL's Motion to Strike.

Dated: January 31, 2019

Respectfully submitted,

*/s/ Lisa M. Agrimonti*

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