

**BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Katie Sieben
Dan Lipschultz
Valerie Means
Matt Schuerger
John A. Tuma**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

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

PUC Docket No. IP6946/WS-17-410

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

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

ASSOCIATION OF FREEBORN COUNTY LANDOWNERS

REPLY COMMENT ON ACQUISITION OF FREEBORN WIND

Freeborn Wind and Northern States Power Minnesota (NSPM) have requested the Commission approve acquisition of the Freeborn Wind assets. On July 8, 2019, the Commission issued “Notice of Comment Period on Request for Site and Route Permit Transfers.” On July 22, 2019, Commerce-EERA filed Comments.

I. COMMERCE-EERA AND THE COMMISSION HAVE ACTUAL AND CONSTRUCTIVE NOTICE THAT INVENERGY TERMINATED 34 LEASES AND GOOD NEIGHBOR AGREEMENTS.

The Commission must approve permit transfers. The rule requires, among other things, that the permittee, Freeborn Wind, LLC, must provide a description of the facilities affected.

Minn. R. 7854.1400, Subp. 1. In this case, the facilities were incorrectly described, referencing

Section 2 of the permit, which states that 17,435 acres are leased. See Request to Transfer Site Permit, p. 3 “Description of the facilities affected” referencing Section 2.0; Aff. of Chris Clark, para. 4. That description is incorrect, because over 4,770 acres, more than 25% of those 17,435 acres identified in the Permit, are no longer leased for the project. Invenergy/Freeborn Wind terminated those 34 leases on or about July 14, 2019, the closing date of the acquisition.¹ This information was included as Exhibit C, Motion for Order to Show Cause, and was also attached to AFCL’s Comment on Acquisition.

Commerce-EERA states that:

Based on the record to date and EERA staff’s experience with permits for other NSPM and Xcel Energy projects, EERA staff has no reason to believe that the Company will not comply with the conditions in the Freeborn Wind Farm permits.

EERA Staff Comments and Recommendations, p. 3, July 22, 2019.

Under the Commission’s rules:

The commission shall approve the transfer if the commission determines that the new permittee will comply with the conditions of the permit. The commission, in approving the transfer of a permit, may impose reasonable additional conditions in the permit as part of the approval. The commission may hold a public meeting to provide the public with an opportunity to comment on the request for the transfer prior to making a decision.

Minn. R. 7854.1411, Subp. 2.

Because the project has materially and substantially changed, any presumption that Xcel Energy/NSPM/Freeborn Wind LLC could comply is misplaced and is premature. Commerce-EERA has not disclosed any new information the termination of lease and good neighbor agreements. There is nothing in the record regarding this other than what has been filed by Association of Freeborn County Landowners. The project has changed, and we do

¹ The Notice of Termination filed with the Freeborn County Recorder is dated June 12, effective June 14, and filed June 17, 2019.

not know what is planned. There is no basis to presume that the new project will comply.

II. COMMERCE-EERA AND THE COMMISSION HAVE ACTUAL AND CONSTRUCTIVE NOTICE THAT XCEL ENERGY PLANS TO REQUEST THE PERMIT BE AMENDED, TO INCLUDE UPGRADING 32 V116 TURBINES TO V120, AND TO PRODUCE NOISE STUDY MODELING LARGER TURBINES, A SHADOW FLICKER STUDY, AND A REVISED SITE PLAN.

The Commission, as above, was provided actual and constructive notice that Xcel Energy/NSPM/Freeborn Wind, has stated it plans to request an amendment to the permit, that it will produce a noise study for the larger turbines, a shadow flicker study, and a revised site plan. Decommissioning information and plan still has not been provided. As above, how this new project plan compares to the project for which the permit was issued is unknown.

III. ACQUISITION SHOULD NOT BE APPROVED UNTIL THE PERMIT AMENDMENT REQUEST HAS BEEN REVIEWED AND VETTED, WITH MISSING NOISE STUDIES, SHADOW FLICKER, SITE PLAN, AND DECOMMISSIONING PLANS MADE PUBLIC AND SUBJECT TO A CONTESTED CASE PROCEEDING.

Freeborn Wind, in its Reply filed July 29, 2019, has provided some information regarding termination of leases for the project, but this has not been verified. Xcel Energy states that “No other commenter seriously contests that the Company can and will comply with the conditions of the permits,” dismissing AFCL concerns without recognition, or acknowledgement, that Freeborn Wind thus far has not demonstrated that it could comply with the permit. The record reflects that Freeborn Wind does not have land rights sufficient to build its transmission line or collector system. No decommissioning information was provided in the application, nor has it been provided since. Freeborn Wind has not demonstrated that it can build the project when considering the terminated leases and the planned permit amendment.

AFCL has requested maps showing the site plan, because for two years now, AFCL has been providing notice and information that the project maps, including the one accompanying the permit, are inaccurate. We still do not have information necessary to demonstrate permit compliance, particularly noise studies, that Freeborn Wind's previous owner, Invenergy, has thus far failed to provide, and which the Commission has failed to require. Can Xcel Energy comply? Likely it can, because Xcel Energy can pretty much do anything it wants. But as of yet, there's been no demonstration by Freeborn Wind that it can comply.

The Commission should not approve the acquisition of either the transmission or wind project, nor should the Commission amend these permits until this missing information has been provided, necessary land rights acquired, the dockets opened for comment to be reviewed by Commerce, the public, and vetted in a hearing, and Freeborn Wind has made a demonstration that it can comply with the permit, and then deliberated the Commission, all as contemplated by the Commission's adoption of ALJ Recommendation Findings 243 and 244.

July 29, 2019



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