

July 22, 2019

**Via Electronic Docket Filing**

Dan Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 530  
St. Paul, MN 55101

**Re: Letter From London Township And Oakland Township Minnesota Requesting Additional Permit Conditions Be Added To Freeborn Wind Energy Permit As Part Of Consideration of Northern States Power Company's Request for Transfer of the Large Wind Energy Conversion System Site Permit Issued for the up to 84 MW Freeborn Wind Farm in Freeborn County in Freeborn County  
DOCKET NO. IP-6949/WS-17-410**

Dear Mr. Wolf:

This firm represents London and Oakland Townships in Minnesota (collectively, the "Townships"), both of which have a large portion of the turbines that the MPUC permitted as part of this project. On behalf of our clients, we would request that this letter be made part of Docket IP-6949/WS-17-410 and reviewed by the Commission as part of its evaluation of the request to transfer the subject permit.

**HARASSMENT BY PERMITTEE**

Since the MPUC approved this Permit, London and Oakland Township have suffered near continuous harassment, threats and challenges from Freeborn Wind, LLC, and now Northern States Power, related to the need for the developers of this LWECs project to comply with local ordinances regarding the use of township roads for hauling Oversize and Overweight ("OS/OW") loads. This harassment must stop and the MPUC as the steward of these projects must require the Permittee to comply with these ordinances.

Both Oakland and London adopted their OS/OW Ordinances after proper notice, research and review of many pages of studies, inquiries and other materials which were submitted into the public record. After public notice and the statutorily required public hearing, deliberation and publication of the ordinance.

Neither of the Townships' ordinances are vague, overbroad and equally apply to all OS/OW (as defined by the Minnesota Department of Transportation) use of

Township Roads. Furthermore, both ordinances are rationally and substantially related to protection of the health, safety, or the general welfare and are written in a fair, general, and impartial manner.

Pursuant to Minn. Rule 7854.1400, the MPUC is allowed to impose reasonable additional conditions to any permit as part of the approval of any requested transfer. Pursuant to these powers, and based on the imperious and overbearing attempts at intimidation, the Townships request that the MPUC amend the subject permit to include a requirement that the Permittee stop the harassment of local township boards within the footprint of the project and that the Permittee is required to abide by any Oakland or London Township ordinances and obtain a Township permit for OS/OW vehicle use of its Township roads.

### **MINN. STAT. 216F.07 – ERROR IN PERMIT LANGUAGE**

Currently, Section 1.1. of the Freeborn Wind Permit errantly states “**Preemption** - Pursuant to Minn. Stat § 216F.07, this permit shall be the sole site approval required for the location, construction and operation of this project . . .”

This language in the permit is contrary to the clear language of Minn. Stat. 216F.07 which reads “A permit under this chapter is the only site approval required for the location of an LWECs. The site permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances adopted by regional, county, local, and special purpose governments.”

Obviously this was an error in the text of the permit and this inaccuracy must be corrected in the transferred permit.

This error in the language of Section 1.1 of Freeborn Permit is clear because otherwise, the MPUC would be attempting to expand its powers and go well beyond the power and authority granted to it in Minn. Stat. § 216F.07. The power of administrative agency in Minnesota is limited to “the authority delegated by law and in full compliance with its duties and obligations.<sup>1</sup>” Minn. Stat § 216F.07 specifically in clear, unambiguous language grants the PUC the limited power to preempt and supersede local zoning, land use and building codes for the LOCATION alone. The statute does not go so far as to give the PUC the power to supersede and preempt all local use of their police powers and ordinances over the construction and operation, in addition to location, for an LWECs project.

There is no Minnesota or Federal statute that grants the MPUC authority to preempt all other regulation of non-locational matters for LWECs. In support of this conclusion, the Minnesota Office of Administrative Hearings found that Chapter 216F is

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<sup>1</sup> Minn. Stat. 14.05, Subd. 1

unambiguous and its plain meaning should be used when interpreting the interaction between MPUC Permit conditions and local ordinances<sup>2</sup>.

Since Minn. Stat. § 216F.07 is not ambiguous and the power granted to the MPUC for preemption is limited to the **location** of LWECs only the Permit language for Docket IP-6949/WS-17-410 must be amended by the MPUC to read:

“**Preemption** Pursuant to Minn. Stat § 216F.07, this permit shall be the sole site approval required for the location, ~~construction and operation~~ of this project . . .”

### **SUMMARY**

The Commission must consider these actions by Excel and its predecessor Freeborn Wind when determining whether to transfer the Freeborn Permit and the transferred permit should include language that states London and Oakland Township Ordinances requiring an Oversize/Overweight Permit for use of Township Roads are binding, valid and applicable requirement to MPUC Docket IP6946/WS-17-410. Furthermore, Section 1.1 of the Freeborn Permit should be amended to read “**Preemption** Pursuant to Minn. Stat § 216F.07, this permit shall be the sole site approval required for the location, ~~construction and operation~~ of this project . . .”

We look forward to your response and please contact me if you have any questions.

Sincerely,

**MESSERLI KRAMER P.A.**



Daniel Schleck

C. Clients  
Minnesota Office of the Legislative Auditor

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<sup>2</sup> See *In the Matter of the Application of AWA Goodhue Wind, LLC*, OAH-3-2500-21662-2 (Apr. 29, 2011).